SUPREME COURT OF THE UNITED STATES.

No. 40.

THE UNITED STATES, APPELLANT,

VERSUS

JOHN RODMAN, ASSIGNEE, AND OTHERS.

APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

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Langtree & O'Sullivan, Print.

Before the Honorable Robert Raymond Reid, Judge of the Superior Court for the District of East Florida, and specially authorized by law to receive and adjudicate claims and titles to lands in the District of East Florida.

Be it remembered that, on the tenth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, John Rodman, as assignee of Robert McHardy, in propria persona, brought and filed in the clerk's office of the superior court for the district of East Florida, his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

Petition to the Court.

To the Honorable Joseph L. Smith, Judge of the Superior Court for the Eastern District of Florida:

The petition of John Rodman, assignee of all the estate, real and personal, of Robert McHardy, deceased, for the benefit of his creditors, respectfully showeth:

That your petitioner claims title as the assignee of said Robert McHardy to a tract of land consisting of 16,000 acres, situated in this district, on the west side of the river St. Johns, in a place where there is a spring and stream of fresh water, and formerly known by the name of *Old Stores*. The lines and boundaries of said tract of land are as follows: The first line runs west 400 chains—the second line runs north 400 chains—the third line runs east 400 chains—and the fourth line runs south 400 chains, as appears by the certificate and plat of survey made by Andrew Burgevin, a surveyor, dated the 10th of May, 1819, now remaining in the office of the register of lands for this district; which said tract of land was granted to the said Robert McHardy, by the Spanish government of East Florida, under the administration of Governor Kindelan, on the 8th of November, 1814, in absolute property, in consideration of the meritorious services rendered by the said McHardy, to the Spanish government of East Florida, he the said McHardy, then having in view the erection of a saw mill on the stream of water running through said land, but which he was prevented from effecting by the residence of the Seminole Indians in that part of the country previous to the cession of Florida to the United States, but the erection of said saw mill at any time, is not made a condition of said grant, all of which will appear by a certified copy of said grant now remaining in the office of the register of lands in East Florida—the original grant, which was in the office of the public archives in the city of St. Augustine, having

been lost, either by the carelessness of the keeper of that office, or in the confusion of a transfer of the documents from the Spanish government to that of the United States.

And your petitioner further showeth, that the said Robert McHardy, at the period in which he obtained said grant of land, was a subject of the King of Spain, and a resident inhabitant of East Florida, and was such resident inhabitant at the time of the cession of Florida to the United States; that he departed this life on the 12th of December, 1822, and that the deed of assignment from him to your petitioner, under which your petitioner claims said tract of land, for the benefit of the creditors of said McHardy, bears date the 1st day of December, 1822, and is recorded in the office of the clerk of the county court, of the county of St. Johns, in this district.

And your petitioner further showeth, that on the 23d of October, 1823, he presented his memorial to the board of land commissioners for East Florida, claiming said tract of land as the assignee of the said Robert McHardy; that the said commissioners, by their report, dated 31st December, 1825, No. 9, have mentioned said grant of land, but without giving any opinion in regard to its validity, or recommending the same for confirmation.

Your petitioner, therefore, prays, that a citation may duly issue from this honorable court, directed to the district attorney of the United States, for this district requiring him to appear before this honorable court and answer this petition; and that this honorable court will enquire into the validity of said grant of land, and if found to be valid, confirm the same to your petitioner as assignee as aforesaid, and your petitioner will ever pray, &c.

JOHN RODMAN,
Assignee of Robert McHardy.

A copy of the foregoing petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for the same district, and the return of the said marshal thereon, is in the words and figures following, to wit: "Executed by serving a copy on Thomas Douglas, esq., dist. atty., the 18th April, 1829.

WATERS SMITM, *Marshal.*"

And afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglas, esquire, United States attorney, for the district of East Florida, brought and filed in the clerk's office aforesaid, his answer to the said petition; which said answer, is in the words and figures following, to wit:

SUPERIOR COURT.

May Term, in the year 1829.

Answer of U. S. Attorney.

THE UNITED STATES OF AMERICA,
ats.
JOHN RODMAN, Assignee of Robert McHardy.

The answer of Thomas Douglas, United States attorney for the district of East Florida, to the petition or bill of complaint of John Rodman, who claims title as assignee of all the estate real and personal of Robert McHardy.

The said attorney, in the name, and for, and on behalf, of the said United States, saving and reserving to them, now and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities, in the said petition or bill of complaint contained, for answer thereunto, or unto so much thereof as it is material and necessary for them to answer unto, answereth and saith:

That he has no knowledge of any such grant having been made by the Spanish Government of East Florida, under the administration of Governor Kindelan, to the said Robert McHardy, as is claimed by the said John Rodman, as assignee as aforesaid in his said petition or bill of complaint, nor of the making of the said survey therein mentioned, or of the loss of the original grant, as in said petition or bill of complaint is alleged, and cannot, therefore, either admit or deny the same, but respectfully prays this honorable court to require of the said petitioners, due proof thereof, and of all the matters and things in the said petition or bill of complaint alleged and set forth, as they are therein stated, according to law and the usages of courts of equity.

And this respondent admits that the said Robert McHardy, at the period when he is said to have obtained said grant of land, was a subject of the King of Spain, and a resident inhabitant of East Florida, but of his death, or of the deed of assignment, which is said to have been made and executed by him to the said John Rodman, or of the presenting of the said memorial by the said John Rodman to the board of land commissioners for East Florida, claiming said tract of land as assignee of Robert McHardy, as is in the said petition or bill of complaint alleged, stated, and set forth, this respondent has no knowledge except from report, and cannot, therefore, either admit or deny the same, but respectfully requires due proof thereof.

And this respondent avers, that if any such grant was ever made by the Spanish government of East Florida, under the administration of Governor Kindelan, to the said Robert McHardy, as is set forth and described in said petition or bill of complaint, which is not admitted, it was made contrary to, and in violation of, the laws, ordinances, and royal regulations, of the government of Spain aforesaid,

which were then in force in East Florida aforesaid, in which said East Florida, the said land is situated; and farther, that if said grant was made as aforesaid, it was made by the said government of East Florida, or by the said governor Kindelan, without any authority to make it, and that it was never approved by the King of Spain, and was, and is, wholly null and void; and that the said survey, if made at all, was also made without any authority, that it was made [as appears by the showing of the petitioner himself] since the 24th day of January, 1818, and is, therefore, null and void.

And this respondent farther avers, that if any such grant was made as aforesaid, it was made in compliance with the petition of the said Robert McHardy, preferred to the said Governor Kindelan, setting forth, that it was the intention of the said Robert McHardy to construct a saw mill on said land, in consequence of the great scarcity of lumber feet in said province, both for home cousumption, and for foreign trade, and in consequence of the utility which the said Governor Kindelan was led by the representations of the said Robert McHardy, to suppose the said home consumption of, and the said foreign trade in the said province, in such lumber, would receive by the construction of the said mill, yet the said Robert McHardy, and the said John Rodman, well knowing the premises, but entirely disregarding them, have for a period of more than fourteen years, which have elapsed since the time when the said grant is said to have been made, wholly failed and neglected to build the said saw mill on the said land, as is manifest from the showing of the said John Rodman himself; and further, that the said Robert McHardy might, by using due dilligence and industry, have constructed the said mill within a reasonable time after the making of the said grant, [if any such was made.]

And this respondent denies that the said Robert McHardy was prevented from constructing it by any such cause as the said Robert McHardy has in his said petition or bill of complaint alleged and set forth, and that the said Robert McHardy, and the said John Rodman, by having wholly failed hitherto to build said saw mill on said land, have forfeited and lost all right and title [if any they, or either of them, ever had,] to said land.

And this respondent farther saith, that the right and title to said land was, at the time when the said supposed grant is alleged to have been made as aforesaid, vested in the Florida tribes of Indians, commonly called Seminoles, a part of whom then resided on said land, or in the neighborhood thereof; and that the said claim, or title of the same Indians to the said land, constituted the only real obstacle [if any existed,] to the erection of said mill thereon; and that, afterwards, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and twenty-three, the same United States, by their certain commissioners who were thereunto duly authorized, made a treaty, at a place called Moultrie, in East Florida, aforesaid, with the chiefs and warriors of the said Florida tribes of Indians, by the first article of which the said chiefs and warriors, for themselves and their tribes, in consideration of the promises and stip-

ulations in said treaty, thereinafter mentioned and referred to, did cede and relinquish all claim or title which they had to the whole territory of Florida, with the exception of such district of country as should therein be allotted to them; and this respondent says, that the said tract of land was embraced in and forms a part of the lands which were ceded to the said United States by virtue of the said treaty, and that it was not included in the district of country allotted to the said Indians, all of which will more fully appear by reference to the said treaty, which this respondent prays leave to introduce and read on the hearing of this cause; and that said grant, if such was made, as is in the said petition or bill of complaint alleged, was made in prejudice of the rights and to the injury of the said Indians; and farther, that at the time when the said grant is alleged to have been made, the said Robert McHardy was a Spanish subject, and that by the laws, ordinances, and royal regulations aforesaid, it was, amongst other things, provided, or specially commanded, that the land which might be granted to Spaniards, should be without prejudice to the Indians; and that those granted to the injury of the Indians, should be restored to their rightful owners, and will more fully appear by reference to the said laws, ordinances, and royal regulations.

And this respondent farther saith, that at the same time last above mentioned, it had long been, and then was, the fixed and settled policy of the Spanish government aforesaid, to parcel out its colonial domain with reference to the sole objects of population and the benefitting is indigent subjects, and that according to that policy, grants for the purpose of speculation, were never approved by said government, and that it appears by the showing of the said John Rodman himself that the said grant was obtained [if obtained at all,] not for the purpose of building such saw mill thereon, but for the purpose of speculation only.

And this respondent farther avers, that if the aforesaid grant was made, as is alleged, and the said Spanish government of East Florida aforesaid, under the administration of Governor Kindelan, was vested by the government of Spain with competent powers to make it the condition aforesaid, upon which it was made, was the act of a sovereign, and that it is not a matter for judicial enquiry, whether any circumstances have occurred to excuse a now compliance with that condition, but that it was and is competent only to the sovereign power who imposed the said condition to release it, and now to the sovereign power alone of the said United States, who have taken the place of Spain by virtue of the second article of the treaty of amity, settlement, and limits, between the same United States and his Catholic majesty, made, concluded, and signed, between their plenipotentiaries at the city of Washington, on the 22d day of February, 1819, and which was accepted, ratified, and confirmed, by the President of the same United States, by and with the advice and consent of the Senate thereof, on the 22d day of February, 1821, as will more fully appear by reference to the said treaty last mentioned, which this respondent also prays leave to introduce and read on the hearing of this cause, does the authority rest to decide whether any circum-

stances have occurred to excuse a now compliance with that condition or to release it.

And now, having fully answered all the matters and things in the said petition or bill of complaint alleged and set forth, this respondent prays, that the said United States may be hereof discharged, and that their reasonable costs and charges, by them in and about the defence of this suit, paid, laid out, and expended, may be adjudged and decreed to them, &c.

THOS. DOUGLAS,
United States Attorney, &c.

And afterwards, to wit, on the third day of August, in the year of our Lord one thousand eight hundred and thirty, the said attorney of the United States for this district, brought and filed in the clerk's office aforesaid, his amendment to the foregoing answer; which is in the words and figures following, to wit:

Amendment to Answer.

AMENDMENT TO THE ANSWER.

THE UNITED STATES, ats. JOHN RODMAN, Assignee, &c. } Claim for 16,000 acres of land.

And the said respondent farther saith, that Don Ruperto Savaadra, "senor auditor of war" of said province, on the 27th day of October, in the year 1818, at the instance of Don Jose Coppinger, governor, &c., as aforesaid, made a report to said Governor Coppinger, upon various matters relative to grants and concessions of land, before that time made in said province, and amongst other things upon the right of those persons to whom grants or concessions had been made, upon the condition of their establishing mechanical works, [such as factories, saw mills, &c.,] the eighth article of which said report is in substance as follows, to wit: "The assignment of large portions of territory which have been made for the establishment of factories to persons who did not then comply, nor have since presented themselves to establish their mechanical works, ought to be considered without any right or value, and said lands declared perfectly free, that they may revert to the class of public lands; in this particular, also, the conditions for which they have been granted should be referred, and in case any of them should have no limits, an equitable time be specified for the establishment of the works, which having passed without carrying them into effect, they be declared vacant." And this respondent saith, that the said Don Jose Coppinger, governor, &c., as aforesaid, afterwards, to wit, on the 29th day of the same month of October, in the year 1818, aforesaid, by his decree of that date, adopted and confirmed the said report, and ordered and directed that it should be complied with, assigning the term of six months from the date as aforesaid, for the establishment of the mechanical works referred to in the 8th article thereof, on the terms therein expressed; all of

which will more fully appear by reference to the said report and decree, as published in White's compilation, at pages 250 to 253, which this respondent prays leave to introduce and read on the hearing of this cause. And this respondent saith, that neither the said Robert McHardy, nor the said John Rodman, as assignee as aforesaid, did build or establish the said saw mill, within the said term of six months, but they, and each of them, wholly failed and neglected so to do, and that all right and title of the said Robert McHardy, and of the said John Rodman as assignee, &c., aforesaid, [if any they, or either of them, ever had,] in or to the said tract of land, under the said supposed concession was entirely annulled and taken away by virtue of said decree, so made as aforesaid; and that the said lands became, and were, perfectly free and reverted to the class of public lands at the expiration of the said term of six months.

And this respondent farther saith, that the same Ruperto Savaadra, "senor auditor of war," as aforesaid, in another report made by him upon the same subjects, at the instance of the said Governor Coppenger, on the 18th day of January, in the year 1819, amongst other things, reported in substance as follows, to wit: "Although no royal order nor the regulations speak of the concessions of lands for the establishment of mechanical works, it is very obvious that it being the will of His Majesty to improve the province which he has taken so much interest in, dispensing for the purpose of copious favors the governors had the privilege of granting lands for the establishment of said works, with the same inducement of proprietorship to all those who contributed by their expenditures to works of so much utility to the improvement of industry, nevertheless, it is certain that many individuals who have obtained such concessions have remained in inaction, without having, for so long a period, advanced the establishment of said works; it appears just that such concessions which have remained in inactivity should be declared null and of no effect; but not so against those who have advanced the establishment of their works, since by their industry and expenditures they have made themselves entitled to every protection to animate their perseverance." And this respondent farther saith, that on the same day and year last aforesaid, the said Don Jose Coppenger, governor, &c., as aforesaid, adopted and confirmed the said report, and, by his decree of the same date, ordered and directed that it should be complied with, as will more fully appear by reference to the report and decree last aforesaid, as published in said compilation. And this respondent farther saith, that at the time last above mentioned, neither the said Robert McHardy, nor the said John Rodman as assignee as aforesaid, had advanced the establishment of the mechanical works, to wit: the building of said saw mill in any manner whatever, [as appears by the showing of the petitioner himself,] and that the said supposed grant or cencession [if any such was ever made] was entirely annulled and set aside by the aforesaid decree last above specified, if indeed it was not originally, or had not before that time become entirely null and void.

THOS. DOUGLAS,
United States Attorney.

And afterwards, to wit, on the ninth day of August, in the year of our Lord one thousand eight hundred and thirty-four, the said claimant brought and filed in the clerk's office aforesaid his replication; which is in the words and figures following, to wit:

Replication.

SUPERIOR COURT, *for the Eastern District of Florida.*

JOHN RODMAN, Assignee of Robert McHardy,
vs.
THE UNITED STATES.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had, and taken to the manifest errors uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto, saith, that he doth, and will, ever maintain and prove his said bill to be true, certain, and sufficient, in the law to be answered unto by the said defendants, and that the answer is very uncertain, evasive, and insufficient in the law, to be replied unto by the replicants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and herein, and hereby, well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

J. RODMAN,
Solicitor in person.

And afterwards, before the superior court for the district of East Florida, holden at the court-house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-four, to which term this cause had come by regular continuance, to wit, on Saturday, the thirteenth day of said term, and the ninth day of August, the following entry of record was made in this cause, to wit:

Hearing of Cause.

JOHN RODMAN, Assignee of Robert McHardy. dec'd,
against
THE UNITED STATES OF AMERICA.
Land claim 16,000 acres.

This day, came as well the said claimant in his proper person as counsel for the United States; and the counsel for the United States, moved the court for a continuance of this cause; which motion was overruled by the court; whereupon this cause came on to be heard this day, and the petition of the said claimant, and the answer of the attorney of the United States, with the amendment thereto, together

with the replication of the said claimant, were read to the court. The said claimant offered in evidence a document purporting to be an original certified copy of a concession to Robert McHardy, for the land claimed in this cause, together with a certified translation thereof, by the translator and interpreter of this court, and is the same document exhibited and testified to by Antonio Alvarez on this day, as by his testimony appears, to the receiving of the said document, in evidence the counsel for the United States objected, and filed the following reasons therefor, to wit: 1st. Because the Spanish archives of the province, among which the original concession should have been found, if any such ever existed, have been resorted to, and they afford no evidence that such an original ever did exist. 2d. Because the absence of the original from the office, where the laws and usages of Spain required it to be deposited, and where the laws of the United States now require all such documents to be kept, [when unexplained,] creates a strong presumption that no such original ever existed. 3d. Because the absence of the original from the office assigned for it by law, is unexplained and unaccounted for. 4th. Because the complainant has not proven the execution of the original from which the copy is certified to have been taken. 5th. Because the original, if produced, could not be received in evidence without proving the signature of the governor; and a copy can never be admitted in evidence, when the original, if produced, would require support from collateral proof. 6th. Because the copy cannot prove the signature of the governor to the original grant, if such original ever existed. 7th. Because to admit the copy in evidence, would be to allow it higher dignity and credit than the original; which objections were overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The said claimant then offered in evidence the petition of the said Robert McHardy, for the survey of the land claimed in this case, dated 7th February, 1815, and the decree of Governor Kindelan thereon dated the same day, and is the same document exhibited and testified to by the witnesses, Antonio Alvarez and John M. Fontane, as by their testimony appears; which said document was received in evidence, without objection, from the counsel for the United States. The said claimant then offered in evidence the certificate and plat of survey of the land claimed in this case, made by Andrew Burgevin, and dated 10th May, 1819, and is one of the documents exhibited and testified to by Antonio Alvarez on this day, as by his testimony appears, to the receiving of which document in evidence, the counsel for the United States objected, and filed the following reasons therefor, to wit: 1st. The said survey is made without any authority whatever by a mere private individual. 2d. The certificate of said Burgevin, reciting that he [Burgevin] had been nominated as surveyor, by a decree of the government, affords no evidence that any such decree was made, and no such decree has been exhibited. 3d. The survey does not follow the calls of the supposed grant or concession. 4th. The said survey was made since the 24th day of January, 1818, and is therefore null and void; which

objections were overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The said claimant also offered in evidence an assignment from Robert McHardy to John Rodman, dated, 1st of December, 1822, the execution of which being proved by John M. Fontane, as by his testimony appears, was read in evidence, without objection from the counsel for the United States. The claimant also read in evidence in this case all the testimony taken in the case of Elizabeth Wiggins against the United States, on the part of the claimant, relating to the manner in which the papers belonging to the public archives were kept during the Spanish government, and since the same came into the possession of the United States, and also all the testimony taken in said case on the part of the claimant, relating to the weight and effect of certificates and certified copies, made and given by Thomas de Aguilar, under the agreement of counsel filed in said case of Elizabeth Wiggins; and the counsel for the United States offered in evidence in this case, without objection from the claimant, the deposition of Antonio Alvarez, as taken in the case of Charles F. Sibbald vs. the United States, the same being so copied as to be made applicable to this case, and a document in the case of Juan Russel, dated Havana, 4th March, 1815; and the evidence and testimony in this case, on both sides, being now concluded, and argument of counsel having been heard, as well on the part of the said claimant, as on that of the United States, this claim was submitted to the court for its decree therein.

Evidence and testimony offerred and read in this cause, and numbered from one to eleven inclusive, to wit:

No. 1.

Offered and read by claimant.

Being translation of the original certified copy by Thomas de Aquilar, of the memorial of, and grant to, Robert McHardy, for the land claimed in this case.

Memorial for Grant.

TRANSLATION.

Petition.

HIS EXCELLENCY THE GOVERNOR:

Don Roberto McHardy, an inhabitant of this province, with due respect represents to your excellency, that since the month of July, 1803, when he came to it and was admitted under the protection of his Catholic majesty, [whom may God preserve,] he flatters himself with having the honor of having been selected and preferred to

others of his class for holding commissions of the government, the truth of which is well known to your excellency, and moreover, for the same reason of his fidelity in the year 1812, when said province was invaded by some rebellious inhabitants thereof, your petitioner was arrested by them and detained prisoner for the space of twenty-nine days, in consequence of which violence, he suffered the loss of all his crop, and other damages and losses to a great amount, which he does not mention, as they are well known to your excellency. In consideration of which, and your petitioner wishing to repair in some measure his said losses, he intends to invest his means in the erection of a water saw mill, in consideration of the great scarcity of lumber in this province, both in regard to the home consumption and to the purposes of commerce, and as it is necessary for that purpose to obtain a suitable position, as is the place known under the denomination of Appreciele Spring, opposite the old store of the house of Messrs. Panton and Leslie, called Hamlet; therefore your petitioner supplicates your excellency be pleased in consideration of the merits he has obtained, and of other circumstances in his favor, to grant him in absolute property a square of five miles in the location designated, and which is vacant; which favor he hopes to receive from the justice of your excellency.

St. Augustine, of Florida, on the eighth day of November, one thousand eight hundred and fourteen.

ROBERT McHARDY.

Grant.

DECREE.

St. Augustine, of Florida, eighth of November, one thousand eight hundred and fourteen.

Whereas, the merits, services, and other circumstances which the interested party exposes in this representation, are well known to me, in consideration of the advantages which will result in favor of the home and foreign trade of this province, and also in conformity to the provisions of the royal order, of the twenty-ninth of October, one thousand eight hundred and ninety, communicated to this government by the Captain General of the Island of Cuba, and of the two Floridas, in relation to the distribution of lands to the new inhabitants, I have come to the determination of granting to the petitioner, in absolute property, the square of five miles of land in the designated place without prejudice to a better owner, and for the attainment of which, let the secretary's office issue to him a certified copy of this expedient and decree, which in all events will serve to him as a title in form.

KINDELAN.

Certificate of Aguilar.

I, Don Tomas de Aguilar, sub-lieutenant of infantry of the army, and secretary for His Majesty of the government of this place, and of the province thereof, do certify that the preceding copy is faithfully taken from the original to which I refer, and in obedience to what is ordered in the above superior decree, I give the present certificate in St. Augustine, of Florida, on the ninth of November, one thousand eight hundred and fourteen.

TOMAS De AGUILAR.

St. Augustine, 21st May, 1830. I certify that the preceding is a correct translation of the Spanish document annexed.

A GAY, *Translator and Interpreter of the Superior Court.*

No. 2.

Offered and read by claimant.

Being translation of the original petition for, and the order of survey for the land claimed in this case.

TRANSLATION.

Petition for Order of Survey.

SENOR GOVERNOR:

Don Roberto McHardy, an inhabitant of this province, with the greatest respect, states to your excellency, that on the 8th of November, of the year last past, of 1814, your excellency had the goodness to grant me, in absolute property, five miles in square of land, for the building of a water saw mill in the place known as Spring Apprecile, and desirous to know its local situation, in order that in any event there should remain no doubt, I ask your excellency to be pleased, in consequence of the absence of the surveyor general, to qualify Don John Addison, an intelligent person, that he may proceed to the survey and demarcation of the said land, which is granted to me; a favor which I do not doubt to obtain from the justice of your excellency.

St. Augustine, Florida, 7th February, 1815.

ROBERT McHARDY.

St. Augustine, 7th February, 1815, granted; and let notice be given to the bounding neighbors.

KINDELAN.

Certificate of Aguilar.

I, Don Tomas de Aguilar, sub-lieutenant of infantry of the army, and secretary for His Majesty of the government of this place, and of the province thereof, do certify that the preceding copy is faithfully taken from the original to which I refer, and in obedience to what is ordered in the above superior decree, I give the present certificate in St. Augustine, of Florida, on the ninth of November, one thousand eight hundred and fourteen.

TOMAS De AGUILAR.

St. Augustine, 21st May, 1830. I certify that the preceding is a correct translation of the Spanish document annexed.

A GAY, *Translator and Interpreter of the Superior Court.*

No. 2.

Offered and read by claimant.

Being translation of the original petition for, and the order of survey for the land claimed in this case.

TRANSLATION.

Petition for Order of Survey.

SENOR GOVERNOR:

Don Roberto McHardy, an inhabitant of this province, with the greatest respect, states to your excellency, that on the 8th of November, of the year last past, of 1814, your excellency had the goodness to grant me, in absolute property, five miles in square of land, for the building of a water saw mill in the place known as Spring Apprecile, and desirous to know its local situation, in order that in any event there should remain no doubt, I ask your excellency to be pleased, in consequence of the absence of the surveyor general, to qualify Don John Addison, an intelligent person, that he may proceed to the survey and demarcation of the said land, which is granted to me; a favor which I do not doubt to obtain from the justice of your excellency.

St. Augustine, Florida, 7th February, 1815.

ROBERT McHARDY.

St. Augustine, 7th February, 1815, granted; and let notice be given to the bounding neighbors.

KINDELAN.

St. Augustine, 21st May, 1830. I certify, that the preceding is a correct translation of the Spanish document annexed.

A GAY, *Translator and Interpreter of the Superior Court.*

No. 3.

Offered and read by claimant.

Being translation of the original certificate and plat of survey.

TLANSLATION.

Certificate and Plat of Survey.

Don Andres Burgevin resident of this place, and surveyor, nominated by decree of this Govornment.

I certify that the annexed plat represents a piece of land which contains sixteen thousand acres of land, situated on the west side of the river St. Johns, at a place where there is a spring and creek of fresh water, west of Fienda Vieja alias Old Store, granted to Don Robert McHardy, to establish a water saw mill, on the 8th day of November, 1814.

In testimony whereof, I give the present in St Augustine, Florida, 10th of May, 1819.

ANDRES BURGEVIN.

[For Plat, see original, page 22.]

St. Augustine, 21st May, 1830. I certify that the preceding is a correct translation and description of the certificate and survey annexed.

A GAY, *Translator and Interpreter of the Superior Court.*

No. 4.

Testimony of Alvarez.

SUPERIOR COURT, *East Florida.*

JOHN RODMAN, Assignee,
vs.
THE UNITED STATES OF AMERICA. } Land claim, 16,000 acres.

August 9th, 1834.

Antonio Alvarez, sworn as a witness in open court, on behalf of the claimant, says, upon looking at original certified copy by Thomas de Aguilar of the memorial and grant in this case, that the signature is in the hand writing of Thomas de Aguilar.

Examined by U. S. Attorneys.

Witness states that there is no original grant in this case on file in the office of the public archives.

Examined by the court.

Witness states that the original copy by Aguilar, offered in this case, is not in the office of witness as keeper of the public archives. It was once in my office, having been deposited there by the register and receiver, who acted as land commissioners. It was withdrawn by Mr. Rodman from my office, under an order of the court.

Examined by claimant.

Upon petition of McHardy, for a survey of the land claimed in this case, being presented to the witness, he says: I think the signature to the petition is in the hand writing of McHardy. I cannot say positively that I have seen him write. McHardy sometimes acted as surveyor. I was in the habit of seeing McHardy's signature from being a clerk in the office of Mr. Aguilar; and upon the signature of Kindelan to the order of survey being presented to the witness, he says: I think it is the signature of Kindelan; I know the hand writing of Kindelan.

And upon certificate of survey of land in this case, signed by Burgevin, being presented to the witness, he says: I think it is the signature of Burgevin; I have seen him write many a time.

Testimony of John M. Fontane.

John M. Fontane, sworn as a witness on the part of the claimant.

Upon petition of McHardy, for survey being shown to witness, he says: I believe the signature to be in the hand writing of McHardy; I have seen him write frequently.

Upon assignment from McHardy to Rodman being presented to the witness, he says: that his name is affixed in his hand writing as a subscribing witness thereto.

No. 5.

Deed of Assignment of McHardy to Rodman.

Offered and read by claimant.

To all to whom these presents shall come, I, Robert McHardy, of Tomoka, in the county of St. Johns, and Territory of Florida, send greeting:

Whereas, I am indebted unto divers persons in divers sums of money, now know ye, that I, the said Robert McHardy, in consideration thereof, and for and towards the payment and satisfaction of the said moneys, and for divers other good causes and considerations, me thereunto moving, have granted, assigned, bargained, and sold, and by these presents do freely and absolutely grant, assign, bargain, and sell, unto John Rodman, esquire, counsellor at law of the city St. Augustine, in the county and territory aforesaid, all and all manner of goods, chattels, debts, moneys, lands, tenements, and all other things in possession, remainder, or reversion, in law or equity, of me the said Robert McHardy, whatsoever, as well real as personal, of of what kind, nature, or quality soever, and all titles, deeds, and instruments of writing whatever, relating to the same; to have and to hold the same, and every part and parcel thereof, unto him the said John Rodman, his executors and administrators in trust for the payment of all my just and lawful debts; and I do hereby authorize and empower the said John Rodman, to sell and dispose of my said goods, chattels, lands, and tenements, and all other things real and personal, as aforesaid, for such prices, and on such terms, as he the said John Rodman may deem fit and just; and from the proceeds arising from the sale thereof, or any part or parcel thereof, to pay first, whatever sum of money I may justly owe to Mrs. Fontane, of St. Augustine, aforesaid, for my board and lodging in her house at divers times; next, a debt due to him the said John Rodman, on two promissory notes—one for two hundred dollars, with interest thereon, and the other for twenty-five dollars, with interest thereon, for professional services heretofore rendered to me by the said John Rodman; next, a debt due to John Drysdale, esquire, of St. Augustine, in the sum of two hundred dollars, with interest thereon, for the like professional services; next, whatever sum I may justly owe to Samuel Fairbanks and the firm of Ripley and Fairbank, of St. Augustine, aforesaid; and afterwards, out of the proceeds of my estate, as aforesaid, to pay all my other just debts contracted by me in Florida; and afterwards, whatever may be justly due and owing by me as one of the firm of James and Robert McHardy, in a mercantile house formerly in business in Nassau, in the Island of New Providence; and

I hereby authorize and empower the said John Rodman as my assignee, to ask, demand, sue for, recover, and receive, all debts, dues, and demands, which are now due and owing unto me, and to take all legal measures in law and equity, by suit, arrest, attachment or otherwise, for the recovery thereof, and to compound or compromise for the same, in such manner as he the said John Rodman may deem fit and proper, and acquittances for the same, to give and to make all necessary bills of sale, deeds, and conveyances, on the sale of my real and personal estate as aforesaid, for the purposes herein before mentioned; provided, nevertheless, and this assignment is made on this condition, that from the proceeds of the sale of my said estate, or any part thereof, I am to be allowed by the said John Rodman, during my natural life, the necesary sums from time to time for my support and for that of my family, until my said debts be wholly discharged, and the surplus, if any, be paid over to me, or my heirs, executors, or administrators.

In witness whereof, I have hereunto set my hand and seal, at the city of St. Augustine, in the territory of Florida, the first day of December, in the year of our Lord one thousand eight hundred and twenty-two.

The words "and all titles, deeds, and instruments of writing whatever, relating to the same," were interlined between the 20th and 21st line of the first page before signing.

(Signed,) ROBERT McHARDY, [SEAL.]

Sealed and delivered in the presence of

JOS. S. SANCHEZ,
JOHN M. FONTANE.

I, Edward G. Gould, a student of law, in the office of John Rodman, esq., in the city of St. Augustine, do solemnly swear, that the said John Rodman did show and deliver to me, for the purpose of making a true copy, a certain deed of assignment from Robert McHardy to him the said John Rodman; and thereupon, I did make such a true and correct copy, which is hereunto annexed.

EDWARD GOULD.

Sworn to, this 11th day of August, 1834, before

K. B. GIBBS, *Clk.*

TERRITORY OF FLORIDA, *St. John's County.*

The foregoing instrument of writing was proven before me the subscriber, clerk of the circuit court for the county aforesaid, to be the act and deed of the said Robert McHardy, by the oath of Joseph S. Sanchez and John M. Fontane, subscribing witnesses thereto, in due form; whereupon, I have admitted the same to record.

Witness my hand this 9th day of December, A. D., 1832.

JAMES S. TINGLE.

No. 6.

SUPERIOR COURT, *East Florida.*

July Term, 1834.

JOHN RODMAN, Assignee, &c.,
vs.
THE UNITED STATES OF AMERICA. } Land claim, 16,000 acres.

Testimony of Joseph S. Sanchez, Bemardo Scqui, Tephaniah Kingsley, George J. F. Clarke, and John M. Fontane, taken in open court, in the case of Elizabeth Wiggins vs. The United States, so far as the same relates to the manner of applying for, and obtaining concessions for lands—the evidence of the concession or grant delivered to the party—as to Aguilar having been secretary—the duties of the secretary of government—the effect of his certified copy of concession, and its admissibility in Spanish tribunals and by Spanish authorities in evidence—and as to the manner of keeping the office of the archives before and after the cession.

Testimony of Jos. S. Sanchez.

OF JOSEPH S. SANCHEZ.

Joseph S. Sanchez, sworn as a witness in open court on behalf of the claimants, states, that he is a native of this country, and has constantly resided here. Witness states that the usual mode under the Spanish Government here, for a party wishing land, was to petition the governor, setting forth the number of his family; this was under the royal order of 1790; and upon that memorial or petition, a decree of the governor was made, either granting or rejecting the petition, and that decree was usually made in the office of the secretary of the government. Witness states that the original memorial and decree were deposited in the secretary's office, and it was the general usage of the government that the memorial and decree should remain in that office. Witness states that the evidence given to the party of his right to the land granted, was a certified copy of the memorial and decree made by the government secretary. Witness states that according to the usage and practice of the Spanish Government here, that a certified copy was received as complete evidence of the party's right to the land, and that the grant was made; and witness believes that that certified copy was considered by the Spanish tribunals here, as equivalent in all respects to the original. Winess states that this certified copy was always considered as sufficient authority for the surveyor general to lay off the land granted. Witness states that he was here in 1821, at the time of the cession of this country to the United States, and that he has not been away from here except once that he went to Havana, and several times to Tallahasse, as a member of the le-

gislative council, and that he was here in 1822 and 1823. Witness states that at the time of the cession of this country, there was a good deal of fear that the original papers might be lost; the United States took possession of those papers in a very tumultuous manner. Witness states that he recollects, that Mr. Law had charge of those papers, and thinks he took charge of them a short time after they were taken out of the hands of the Spanish anthorities, they were kept by Mr. Law in the hall under the room now occupied as a court room; and witness does not recollect that they were kept any where else by him. Witness states that he was in the habit of going into the office of the archives while Mr. Law had charge of it, for four or five months, morning and evening. Witness had an acquaintance in that office, a Mr. Cavedo. Witness thinks there were a few temporary shelves put up in this room spoken of by him, but does not know whether these shelves were sufficient for all the papers in the office or not; there were some bundles of papers on the table, and some in some boxes in the room. Witness did not think at the time that these papers were kept carefully. Witness has seen papers blown from the bundles over the room; many of the bundles of papers were kept loose. Witness that he dont know that Mr. Law was at all precise as to the persons he permitted to come into the office. Witness saw a good many persons in the office. Witness states that he has been several times in the office and found neither Mr. Law or his deputy, and the windows and doors both open. Witness states that this office was kept in such a manner, that nothing could be more easy to abstract or take from it documents, if persons felt disposed to do so. Witness says that this office was kept very carelessly, very much so indeed. Witness states that the manner in which this office was kept was a matter of anxiety and alarm to the inhabitants of this place; and he has heard persons interested in land claims express their alarms that their papers might be lost from this office. Witness states that he cannot say by what authority the papers came into the possesion of Mr. Law; whether they came into his possession in virtue of his office as alcalde of this city or not; and has never heard that he was under any pecuniary responsibility for the safe keeping of these papers. Witness states that he thinks a Mr. Penn, who is now dead, had something to do with these papers; but whether as Mr. Law's deputy or not, he does not know. Witness knows that these papers were in the possession of Mr. George Gibbs and Mr. Tingle together at one time; and I believe, neither Mr. Gibbs or Mr. Tingle understood the Spanish language. Witness states that the original memorials and decrees were kept on separate sheets of paper, filed away in bundles, in which way he thinks they are kept now.

Witness states that he thinks in one or two instances he has seen persons searching for papers in the office of the archive, while that office was kept by Mr. Law; which persons were not in any manner connected with the office; and that during the time these persons were thus searching, neither Mr. Law or his deputy were present; Mr. Medicis, who is now dead, was one of the persons he saw thus searching for papers in this office. Witness states that he believes that con-

cessions and decrees for lands were kept in the Spanish Government secretary's office, upon loose sheets of paper filed away in bundles. Witness states that he thinks it would have been perfectly easy for these persons that were examining the papers in Mr. Law's office, to have abstracted them from that office if they thought proper; there was nothing to prevent it.

Examined by U. S. Attorneys.

Witness states that his opinion, that a certified copy by the government secretary would be received by the Spanish courts, is founded on his knowledge of the usage of the Spanish Government. Witness knows nothing about Spanish law. Witness states that persons wishing to obtain royal titles for their lands, usually petitioned the governor, and attached to their petition a certified copy by the government secretary of the memorial and decree, and this is the reason that the witness thinks that this certified copy would be received by the Spanish Government as full evidence of the grant; and I suppose it was upon this evidence the governor usually made the royal title; and it is from this practice the witness believes that a certified copy would be received as evidence. Witness states that he does not know of an instance, nor has he heard of one, where the royal title had issued upon the certified copy of the concession by the government secretary when the original concession was not filed in the proper office. Witness believes that when individuals wished to transfer papers from one part of the Spanish dominions to another, from fear of losing them, would deposit the originals in some public office, by permission of the government, certified copies of which, were received as evidence in any other part of the Spanish dominions; and witness does not know whether that certified copy would be received in evidence, when it was known at the time, that the original was not in the proper office; supposes it would not be received in evidence. Witness states that he thinks that he has picked up in Mr. Law's office some grants of land which were blown from the bundles in this office across the floor. There were some bundles of papers in some boxes, which were without tops; but the principal part of the papers in this office, were kept on open shelves. [When witness speaks of the principal part of the papers, he does not mean the principal part of the grants, but the principal part of the bundles of papers in the office.] Witness does not know whether all the papers received from the Spanish Government, were in this office of Mr. Law's or not; but he did not think that there were as many papers in this office as he had seen in boxes when they were taken from the Spanish Government. Witness saw two boxes with papers in Mr. Law's office; these boxes were about four feet in length, and about three feet wide, and two feet high, these boxes were not quite half full of papers. Witness can't say that the grants and concessions in this province would contain more paper than he saw in those two boxes. Witness did not see these papers that he found on the floor in Mr. Law's office blown from the shelves. There was nobody in

the office when he found them; he merely found them on the floor, and supposes they were blown from the shelves; but they may have been blown from the table. Witness states that the grants of land which were in this office were in bundles, but the strings of some of the bundles were loose, and the papers perfectly unconfined. Some of the bundles had been opened in looking for papers, and had not been tied up again. Witness saw them in that situation several times. Witness was in this office every day. Witness does not remember to have seen Mr. Law in the office except when he came to sign papers which had been copied by his clerk, Mr. Cavedo. Witness has been in the office several times, and found neither Mr. Law nor Mr. Cavedo there. Witness says that he don't recollect whether Mr. Cavedo was in the office at the time he picked these papers off the floor. He has several times picked up papers from off the floor when no one was in the office. And sometimes when he came into the office and found papers throwing about in this way, Mr. Cavedo was there. Witness states that when he went into Mr. Law's office and found no one there, he did not remain there long before Mr. Cavedo came in; some eight or ten minutes. And witness supposes that the way that the office came to be alone was, Mr. Law would come into the office not more perhaps than once a week, to sign copies of papers that had been made out by Mr. Cavedo, and having signed the copies, would retire, leaving the door and windows open. Witness states that the windows were used as much as a place of entrance as the door. And witness has entered the office through the windows very frequently. The door was in the yard, and people did not take the trouble to go round to it. Witness found the door closed sometimes, but it was barely pulled to. Witness states that there were two windows in this office that opened into the street; and the door from this office opened into the yard under the piazza. Witness states that he thinks when Mr. Cavedo left the office to be absent for any length of time, he always fastened the door and windows as well as they could be fastened. And witness himself, has assisted him to do so. Witness thinks that the doors and windows of this office could not be securely fastened; the window shutters were very old, and any person could have pulled them open, by putting their fingers between the shutters. Witness states that he does not know that these papers that he saw blowing about the office, were papers that Mr. Cavedo had copied; they were such papers as he usually copied; they might have been papers which he copied, or they might have been blown off the shelves. Witness states that he does not know that the Mr. Medicis that he saw in Mr. Law's office, was an associate of either Mr. Law or Mr. Cavedo; he does not know that he was acquainted with Mr. Law; and was not intimate with Mr. Cavedo. Witness don't know what he was searching for.

Examined by Claimant.

Question. You have said that the certificate of the government secretary, attached to the memorial for a royal title, was the evidence

on which such royal title was usually given. Have you not also understood that it was the evidence on which the land was surveyed to the grantee by the surveyor general?

Answer. The surveyor general, on the presentation of this certificate, always made the survey, and that certificate was evidence to him that the land was granted.

Question. Do you not understand that the certificate of the government secretary was full proof of all the facts which such certificate set forth?

Answer. Witness supposes so. It was always taken and believed so.

Question. Do you not understand and mean to testify that the certificate of the government secretary was proof that the memorial was presented, and the decree passed by the governor, as set forth in the copies certified by the secretary?

Answer. Witness believes that they were always so accepted by the government. He never heard it questioned.

Question. Was not such certificate evidence of the original memorial and grant?

Answer. Witness says certainly.

Question. Would not such certificate, in your judgment, and according to the usages in this province in Spanish times, be evidence or proof, that the original memorial and decree were in the proper office at the time the certificate was given, though at some subsequent period they had been taken from it or could not be found there?

[This question objected to by the counsel for the United States, and objection overruled by the court.]

Answer. Witness says he thinks they would, according to what he knows on the subject, but thinks they were usually taken.

Question. Had the grantee any right to the possession of, or any control over the original?

Answer. Witness says no.

Question. Could a certified copy of the original be obtained at any time from the secretary's office, so long as that original remained in that office.

Answer. Witness says yes; he could get as many copies of the original as he pleased.

Examined by U. S. Att'ys.

Question. Do you recollect a single instance in this province, while under the Spanish Government, in which a certified copy of a concession was received in evidence, and taken as proof that such a concession was made, when no original concession could be found in the office from which the copy purported to have been made?

Answer. Witness says that may have occurred; does not know of any of his own knowledge. Witness never heard of an instance where the originals were enquired after, when the certificate was exhibited.

Question. Do you recollect any usage of the Spanish Govern-

ment by which such a certified copy, under the circumstances stated in the last preceding question, could have been received in evidence?

Answer. Witness says he does not recollect of any usage on the subject, except the usage as already stated, of receiving them in evidence. Witness adds, that he supposes that it was always taken for granted, that where the certified copy was offered, the original was in the office, and that he knows of no other instances where a certified copy was received in evidence, except those where they were presented to the surveyor general or to the governor, on application for royal titles, and they were taken by them as evidence without farther enquiry.

Witness states, that it is his opinion, that where it was known that there was no original in the office, this certified copy would be received in evidence, unless the opposite party could prove that it was a forgery. Witness does not remember of a single instance where a certified copy was offered when there was no original in the office. Witness thinks a certified copy would be received, unless it was proven that there never was an original in the office, or that it was a forgery. Witness is now speaking of his opinion of the usage of the province. Witness does not know that an instance has occurred in Spanish times, where a certificate has been exhibited, that the opposite party has suggested that there had been no grant made; in Spanish times, the party alleging a forgery was required to prove it. Witness states, that where a party brought suit upon his grant, alleging it to be good, and the opposite party denying that it was so, the party alleging that it was not a good grant, was required to prove that it was not so. Witness states that he is talking of what the usage would be; he has never heard of such a case, and that he never heard of any such litigation as that spoken of by him above, in Spanish times. Witness states that the question never arose to his knowledge whether a grant was in or out of the office, the certified copies always spoke for themselves. Witness states that he does not recollect that he ever heard of an original concession being lost in Spanish times from the archive office.

On the testimony of Jospeh S. Sanchez being read over to him, he desired to explain and correct that part of it in which he is made to say, "that he does not know whether the certified copy would be received in evidence, when it was known at the time that the original was not in the proper office; supposes it would not be received in evidence." And he now says, that his opinion is, that where it was known that the original never had been in the office, the certified copy would not be received in evidence, but the certificate would be *prima facie* evidence that the original had been in the office.

By the Court.

Question. Do you know of any case having existed under the Spanish Government, where the certificate of the secretary was received as evidence, when it appeared that the original had never been in the office?

Answer. Witness says that he never heard of such a case, and does not believe that such a case ever existed.

The counsel for the United States objected to all the testimony of this witness, relating to the manner in which the papers in the office of the archives were kept, and objection overruled by the court.

Examined by U. S. Att'ys.

Question. Did not the regulations and usage of this province require the grantee to take possession of the land granted, within six months after the date of the grant?

Answer. I never knew of any fixed regulations. The governor's will, I believe, was superior or equal to any regulations, and he directed as he pleased, when the party should take possession of the land?

Question. When the governor published his regulations, were they not considered in force and binding on the inhabitants till he changed them?

Answer. I can't say that the governors themselves stuck to their regulations. They were made for the governor's regulation, and the people had nothing to do with them. The governor changed them whenever he thought proper.

Question. You say that the people had nothing to do with the regulations published by the governors; did they not obtain their grants under those regulations?

Answer. Yes; they did sometimes; sometimes native born Spanish subjects would apply to the governor for land, and he would refuse to grant it to them; that shows he did not mind his regulations, or that he considered himself bound by them.

Question. Do you know of any instance in which the governor made a grant contrary to the regulations, and if you do, please state the case?

Answer. I can't call any particular case to my mind just now. I do not recollect any particular case. I think the governor has granted lands to persons that had no slaves.

Question. Do you know of any other departure from the regulations, than the one you have mentioned?

Answer. I do not recollect.

Examined by Claimant.

Question. Did not the governor, agreeably to your understanding of the usage of this province, grant, or refuse to grant lands, for head rights, according to his own good will and pleasure?

Answer. I never heard of any regulations, or any other than the governor's will. I never heard his power disputed.

Examined by U. S. Attorneys.

Witness states that he never heard that the Spanish governors of

this province were controlled by any law in the granting of lands; they granted lands as they pleased. The governors of this province were governed by their will alone; they were generally considered supreme. Witness never heard any one doubt the power of the governor in any instance.

Examined by Claimant.

Question. Do you or do you not mean by your answer to the last preceding question, that their will was the supreme law of the province, and that no one in the province presumed to dispute it.

Answer. That's what I've said in my last answer.

Examined by U. S. Att'ys.

Question. Were not the governors of this province under the control of the laws of the Indies and the royal orders of the king, in all matters relating to the granting of lands, and did they not strictly obey those laws and royal orders?

Answer. From what I've seen in the books containing the laws of the Indies, I think the governors were not bound by them or the royal orders. I have known that the governor did not obey those laws, and I know many instances where the governor has refused to grant lands when the parties were entitled to them under the laws of the Indies. I have known many instances, but I do not at this time recollect them. Witness qualified this answer by adding, the governors might have been bound by these laws, but they disregarded them in many instances.

Examined by the Court.

Witness states that he does not know whether regular reports of the transactions of the government in this province, during Spanish times, were sent to Spain at stated periods.

Examined by U. S. Att'ys.

Question. Have you any other reason for believing that the governors of this province were not bound by the laws of the Indies and the royal orders of the king, and that their will was the supreme law of the province, than you have given in your answer to the last preceding question?

Answer. He certainly could not be bound by any law if he could arrest a person in the street without telling him for what, and imprisoning him, and feeding him on bread and water, as he has done here, and nobody disputing his power here.

Question. Is it from your recollection of the fact, that the governors of this province sometimes refused to grant lands to persons whom you thought entitled to them, and of their having persons arrested in the street and put in confinement, without telling them the

cause of their arrest, that you have formed the opinion that their will was the supreme law of the land, and that he was not always governed by the laws of the Indies and the royal orders of the king, in making grants of land?

Answer. Yes; it is from the circumstance that his will governed every thing and nobody disputed it.

Question. What general law of Spain or royal order did the governor violate, in causing persons to be imprisoned in the manner you have mentioned?

Answer. I never looked over the royal orders or the laws of the Indies till lately, and the opportunity I had of seeing the orders is from translating papers from the archive office, and he was not at all times governed by them.

Question. Do you know that the governor was satisfied that the persons to whom you say that he refused to grant lands, were entitled to grants of land agreeably to the laws of the Indies?

Answer. He must have known that these persons were entitled to grants of land, as the persons were native born citizens. The governor must have known these circumstances, and that they were entitled to grants of land.

Testimony of Ben'do. Segui.

OF BENARDO SEGUI.

Benardo Segui sworn as a witness in open court on behalf of the claimant.

Question. Are you or not a native of East Florida, and have you or not resided the principal part of your life in St. Augustine?

Answer. Witness says yes.

Question. In what manner, according to the usage and practice of the Spanish Government, were concessions or grants of land applied for and obtained in East Florida?

Answer. Applied for by petition to the governor, and obtained by decree of the governor.

Question. What was done with the original memorial and decree or concession?

Answer. Kept in the secretary of government's office.

Question. What evidence of the concession or grant was given to the party?

Answer. A certified copy of the original by the secretary of the government.

Question. What was the purpose for which the certified copy of the concession or grant was given to the grantee?

Answer. To show that he had the grant, and to prove, in case of necessity, that the land was granted to him.

Question. Was or was not this certified copy of the concession or grant, full and complete evidence of the original, and that it was in the proper office at the time the said copy was made?

Answer. Yes; it was.

[Rec. No. 40—4.]

Question. Would or would not a copy of a concession or grant, properly certified by the government secretary, have been received by the courts of justice, and other authorities of the government in Spanish times, as full and complete evidence that the original concession or grant had been made?

Answer. Yes; the same as if it was the original itself.

[The two last preceding questions were objected to by the counsel for the United States, and the objection overruled by the court.]

Question. Was or was not the copy of an original concession certified by the government secretary, of the same force and effect as was the copy of any act or deed, certified by a notary of the Spanish Government, according to your understanding of the usage of the Spanish Government here?

Answer. Yes; the same.

Question. Suppose it should have appeared in Spanish times that the original of a concession or grant was not in the office at the time the certificate was offered in evidence, what, in such case, would have been the effect of the certified copy, according to the usage of the province?

Answer. It would have been received as prima facie evidence, until it was proven that no grant was ever made.

Question. Have you or not, had a great deal to do with the public offices in Spanish times?

Answer. Yes; I have.

Question. Have you or not held public offices under the government in Spanish times?

Answer. Yes; I have.

Question. Are you not now the postmaster of this city?

Answer. Yes; I am.

Question. How many years have you been so?

Answer. I have been so over three years.

Question. Were you not one of the commissioners, on the part of the United States, at the treaty of Moultrie with the Florida Indians in 1823?

Answer. Yes; I was.

Question. Was or was not the law pursued and practised by you, as your profession in East Florida, prior to its cession to the United States?

Answer. I was a clerk in the notary public's office, and pursued the practice of advocating causes. I was not a professional lawyer.

Question. Who was the government secretary of this province in 1815?

Answer. Thomas de Aguilar.

Question. How long had the said Thomas de Aguilar been secretary of the government of East Florida before that time, and how long after it?

Answer. I can't tell how long previous, but he was secretary till the change of flags, and I think he was secretary from the year 1809, or 1810.

Question. Was it not one of the especial duties of the govern-

ment secretary to give out certified copies of concessions or grants of land from his office?

Answer. Yes; it was.

Question. According to the usage of the province, was not the certified copy, by the government secretary, given to the grantee for the especial purpose of securing to him evidence of his grant?

Answer. Yes; that was the object.

Examined by U. S. Att'y.

Question. How do you know that the certified copy of a concession would have been received as evidence of the existence of the original in the proper office under the Spanish Government?

Answer. Because I have seen it received many times when I was clerk in the escribano's office.

Question. In what manner, and under what circumstances, were they received?

Answer. As a voucher in evidence to the facts set forth in a memorial.

Question. What was the nature of the memorial to which you allude?

Answer. I allude to any kind of a memorial; any facts that might be set forth in a memorial to be proven by the certificate of any legal officer.

Question. Do you recollect any case where a certified copy of a memorial and decree for land was ever received in evidence in the Escribano's office, when it was known that there was no original of said decree and memorial in the proper office of the government?

Answer. I do not know of any such case.

Question. Do you remember any case under the Spanish Government, in which a paper, certified by a secretary of the government as a copy of an original concession, was received and taken as proof that an original had ever existed, when no such original concession could be found in the office from which the copy purported to have been taken?

Answer. I do not recollect any case.

Question. If you remember no case in which a certified copy of a concession was received under the Spanish Government, as evidence that an original had existed, when no such original could be found in the proper office, how do you know what was the usage in such a case?

Answer. I do not remember any such case.

Question. If you remember no case in which a certified copy of a concession was received under the Spanish Government, as evidence that an original had existed, when no such original could be found in the proper office, how do you know what was the usage in such a case?

Answer. I do not remember any such case.

Question. Do you know of any such usage?

Answer. I do not recollect any such usage; whenever the certi-

fied copy, by the secretary, was offered in evidence, it was always considered that the original was in the office, and if there was no original in the office it was a fact to be proved.

Examined by Claimant.

Question. If at the time of offering, to use as evidence a certified copy of a concession or grant, made by the government secretary, it should have been suggested that there was then no original in the office, would that invalidate such certificate made at a prior date?

Answer. No; it would not have invalidated it at all.

Examined by U. S. Att'ys.

Question. Did you ever know such a case as the one mentioned in the last question?

Answer. I recollect one or two instances. I do not recollect the names of the parties to them. One of them was in the proceedings of a civil law suit, and I suppose the proceedings of the case are on file in the office of the public archives. All the proceedings in Spanish courts were in writing.

Question. In what office did they occur and at what time?

Answer. During the time I was in the office of the escribano, who was clerk of the court, these cases occurred. I was in the escribano's office from the year 1800 to 1815. I do not recollect the case or the names of the parties.

Testimony of Zeph. Kingsley.

Of Zepaniah Kingsley.

Zephaniah Kingsley, sworn as a witness in open court on behalf of the claimant.

Question. How long have you been an inhabitant of East Florida?

Answer. Since the year 1803.

Question. Have you been acquainted with the manner in which public lands were granted in East Florida in Spanish times?

Answer. Yes; I have. The manner in all cases that I know of, is, first by making a petition or memorial to the governor, dated and signed, setting forth the object and wishes of the petitioner. It was then usual for the governor to put on the margin of the memorial an enquiry to the officer who had jurisdiction of the case, whether the facts set forth in the memorial were true or not, and according to the certificate of that officer the governor made his decree.

Question. Upon this memorial or petition, did the governor grant or concede the lands petitioned for by the petitioner?

Answer Upon this petition the governor either conceded or refused the lands.

Question. Where was this memorial and decree of the governor's kept, when he granted or conceded the land petitioned for?

Answer. After they had gone through the government office, they were sometimes transferred to the escribano's office, but if they were not transferred to the escribano's office, they were kept in the secretary's office, and if the party wanted a certified copy, it was got from the escribano's office. I do not remember that I ever got a certified copy from the secretary's office, and the certificate usually contained the words "to serve in case of loss."

Question. Were not your titles, which you had lodged in the escribano's office, always royal titles?

Answer. Yes.

Question. Do you or do you not know that mere grants or concessions of land, not amounting to what are called royal titles, were kept in the office of the secretary of the government?

Answer. I do not know. My understanding is that they might be kept in either office.

Question. Are you able to state that you ever saw a mere concession of lands verified by the certificate of the escribano?

Answer. I can't call to my remembrance having seen one.

Question. Have you not seen many such concessions verified by the certificate of the secretary of the government?

Answer. I cannot particularly remember.

Question. Do you not know that there were two distinct officers kept here in Spanish times, in which documents, relating to the granting of lands, were deposited; and if so, what were they called?

Answer. Yes; one of these offices was called the government secretary's office, and the other the escribano's office.

Question. By whom were documents from the office of the secretary of the government certified?

Answer. By the secretary of the government.

Question. Were the certified copies made by the government secretary, according to your opinion of Spanish usage, evidence to prove the matters set forth in such certified copies?

Answer. Certainly; no other evidence was required that I ever heard of.

Examined by U. S. Atty's.

Question. You have said that you always received royal titles for the land granted to you by the Spanish Government, did you ever receive a royal title until you had first obtained a concession from the governor?

Answer. Never.

Question. Do you recollect any case in which a certified copy of a document or paper, purporting to be a concession for lands, was received in evidence, and taken as proof, that such a concession had been made by the governor, when search had been made in the proper office, and no such original concession could be found?

Answer. I never heard of such a case. I never heard of such

certified copy being doubted; it was considered as evidence whenever it was offered; there was no other evidence required than the certificate of the officer of the proper department.

Question. Do you recollect any case under the Spanish Government, in which the original grant or concession could not be found in the office to which it properly belonged, after such grant or concession had been made?

Answer. I never heard such a thing called in question.

Question. Under the Spanish Government, if you had gone to the public archives, and after strict examination, you could find no grant or concession to a certain individual, would you not consider that circumstance as conclusive evidence that no grant or concession had issued to such individual?

Answer. I never heard of an instance of that sort; that if a person told me he had a grant of lands in the office of the archives, and on search being made, none could be found there, I would suppose that the person had told me an untruth; even the governor himself would not go farther than the officer's certificate.

Question. Do you mean, by what you have said, to answer the last question in the affirmative or negative?

Answer. I should not consider it conclusive, but a strong presumption, that such concession had never been made, as such examination could only have been made through the escribano, or public officer charged with the department, who might have overlooked it, or it might have been mislaid and not remembered, therefore admits of the possibility of its former existence. This is a conscientious answer to the question, and may either be considered positive or negative, according to the construction put upon it by those concerned.

Examined by Claimant.

Question. Suppose, sir, that after you had examined at the office of the archives, and found no grant there, a certificate of the secretary or escribano had been presented to you, setting forth and showing such grant, would you not consider it conclusive that such grant had been made by the government?

Answer. I certainly should consider it conclusive that the original had existed there, and had been mislaid?

Examined by U. S. Att'ys.

Question. In your last answer have you expressed your own opinion, or are you speaking of the usage of the province under the Spanish Government? If of the usage of the province, how do you know it to have been the usage?

Answer. My opinion is derived from my own experience, combined with the usages of the province. I know it to be the usage from experience.

Question. Did you ever know an instance of the kind under the Spanish Government?

Answer. I can't say I remember any particular case of the kind at present.

Question. Then how can you speak of the usage?

Answer. The same as we speak of all other things; can't tell where we get our opinion from, but from our knowledge.

Examined by Claimant.

Question. Are you acquainted with the manner in which the public archives was kept after the cession?

Answer. Only transciently when I came to town. I was never employed in the office.

Question. Be pleased to state how the said office was kept, so far as came under your observation. whether with care or otherwise?

Answer. My impression was that it was not kept with care; there was no heard to it.

Question. Were you ever in the office while kept by Mr. Edmund Law?

Answer. I was in it once or twice while he was keeper, during his absence, when he was away at the north. I believe it was two years after the change of flags before there was a regular keeper of the archives.

Question. Were the papers kept on shelves, or how were they kept?

Answer. As far as I observed, they were kept in the greatest confusion. It appeared to me to be a resort for boys smoking segars, and idle people.

Question. Was there or not, great apprehension entertained by the Spanish inhabitants for the safety of the titles, immediately after the cession?

Answer. I heard a general expression of that sort amongst all the people, and had a great deal of fear myself.

Question. Did or did not that fear result from the manner in which the office of the public archives was kept for some time after the cession?

Answer. It did.

Question. Where was the said office kept at the time to which you have referred?

Answer. In the room under the one now occupied as a court room.

Question. Was or was not the papers of the said office scattered about the office, and loose upon the tables and shelves?

Answer. They were generally in great disorder; they were not in any regular order.

Question. Could or could not any paper have been abstracted from the said office, if any person had been disposed to do so?

Answer. It was my impression that they could; and it was the general report that persons that had cases in the courts here at that time, helped themselves, and some of these papers were found among the effects of deceased persons.

[The counsel for the United States objected to the testimony of this witness as to rumor and report, and objection sustained by the court, and testimony incorporated in the record, to be reviewed in case of appeal.]

Question. Do you or not consider, from the manner in which this office was kept, that papers belonging to it were liable to destruction and loss, as well as abstraction?

Answer. My impression is, that any thing could be done in it. I do consider that they were liable to destruction and loss, as well as to abstraction.

[The counsel for the United States objected to the foregoing question, and objection overruled by the court.]

The counsel for the United States objected to all the testimony of this witness, relating to the manner in which the papers in the office of the archives were kept, and objection overruled by the court.

Examined by U. S. Att'ys.

Question. How long was Mr. Law keeper of the archives?

Answer. I am not able to say exactly. I think it was about two years from the time of the change of flags till there was a regular keeper.

Question. Who was the first regular keeper?

Answer. My impression is that Mr. Reynold's was the first regular keeper.

Question. Was not Mr. Cavedo present on those occasions when you visited the office?

Answer. I am not able to charge my memory as to any particular individual that was present. There appeared to be no regularity, and only a parcel of boys.

Question. You know Mr. Cavedo personally, and that he was a clerk of Mr. Law's?

Answer. I know Mr. Cavedo personally, but I did not know him to be a clerk of Mr. Law.

Question. How often were you at the office?

Answer. Two or three times.

Question. What were the evidences of disorder you saw in the manner of keeping the office?

Answer. The papers lying about in disorder, and some of them in piles on the floor.

Question. Were not the persons whom you saw in the office engaged in examining the papers?

Answer. No; I did not perceive that they were. They appeared to be playing and amusing themselves. I did not see any of them employed in an official capacity.

Question. How were they playing or amusing themselves?

Answer. The same as boys usually do; smoking segars and fun.

Question. Were they small boys you saw smoking segars?

Answer. No, they were ordinarily sized boys, and some of them stout young men.

Question. Do you recollect the names of any of the young men or boys?

Answer. I can't charge my memory with the names of any of them.

Question. How many persons did you find in the office?

Answer. I am not able to say.

Question. Do you recollect any impropriety or disorder of conduct among the persons you saw there?

Answer. I did not; no more than young men usually would. I saw no impropriety.

Testimony of Geo. I. F. Clarke.

OF GEORGE I. F. CLARKE.

George I. F. Clarke, sworn as a witness on behalf of the claimant.

Qestion. Were you or not the surveyor general for this province under the Spanish Government? If you were, state how long?

Answer. Yes; from 1811 till the change of flags in 1821.

Question. Are you acquainted with the manner of applying for and obtained concessions of land, while East Florida was under the Spanish Government?

Answer. Yes; by petition to the governor, which he granted by a decree.

Question. State what was done with the decree of the governor?

Answer. The petition and decree remained in the governor's office.

Question. What evidence of the decree was given to the party?

Answer. A copy of that petition and decree certified by the secretary.

Question. For what purpose was this certified copy given to the party?

Answer. As his evidence of the prayer of his petition being granted by the governor.

Question. Was the party entitled to the possession of the original memorial and decree, or had he any control over them?

Answer. They remained in the governor's office as a record; the party was not entitled to them.

Question. Were the certified copies made by the government secretary, according to your opinion of Spanish usage, evidence to prove the matters set forth in such certified copies?

Answer. Yes.

Question. Was or was not the copy of a concession, properly certified by the government secretary, full evidence that the original had been made, and was in the secretary's office at the time the certified copy was given?

Answer. Yes.

Question. Was or was not a copy of a concession properly cer-

tified by the government secretary, full legal authority to you, as surveyor general, to survey to the parties the lands granted him by the concession?

Answer. Yes.

Question. Was it or not your uniform practice as surveyor general, to act upon the copies of concessions thus certified, as authority for surveying the land conceded?

Answer. Yes.

Question. Was or was not the copy certified by the government secretary, equivalent to the original as evidence of the party's title to the land?

Answer. Yes.

Question. Suppose it should appear at the time the certified copy by the government secretary, was offered in evidence, that no original could be found in the proper office, or be proved except by such certified copy, would such certified copy still be received as evidence that the original had existed, as set forth in such certified copy?

Answer. I know of no case of the kind that has ever happened, but I have no doubt in my mind, but that the certified copy would be as good evidence as the original.

Question. According to the usages of the Spanish Government here, were not such certified copies, in the absence of the originals, received as equivalent to, and actually made originals?

Answer. I don't know of an instance where there was a deficiency of the original, but I have no doubt that the copy would be received by some process, the copy would be made as good as the original.

Question. Had or had not the certified copy of a concession, given by the government secretary, the same force and effect as a certified copy given by the notary of the government as evidence?

Answer. Yes; they both had the same effect; they were both like evidence.

Examined by U. S. Att'ys.

Question. How do you know that the certified copy of a concession, given by the government secretary, would have the same force and effect as a certified copy given by the notary of government as evidence?

Answer. The notary of government and secretary gave different certificates. The notary gave certificates of titles already formed, and the government secretary gave certificates of decrees and memorials, and the respective certificates of these officers were of the same effect. The notary never gave such certificates; the certificates given by the notary were as good as the certificates of the government secretary, where they related to things which he could certify; they had not the same effect when applied to memorials and decrees.

Question. Was not the notarial certificate annexed to the copy of a grant always under the seal of the notary, and was not the certifi-

cate given by the government secretary, and annexed to the copies of concessions, always without seal?

Answer. The notary used no seal; he used a flourish that was called a signet; the governor put a seal on such papers as were to go out of the province; the certificate of the secretary had no seal.

Question. Was not the signet of the notary furnished him by the government at the time of his appointment, and was said notary not required to affix his signet to all his official acts?

Answer. Yes.

Question. How do you know that a certified copy given by the government secretary was equivalent to the original as evidence of the party's title to the land?

Answer. The certified copy was full evidence, and the original could be no more. I never saw the original produced in evidence.

Question. Do you recollect any case under the Spanish Government in which an instrument of writing, certified by the government secretary as a copy of a concession, was received as full evidence of a concession, when no original concession could be found in the proper office of the government?

Answer. I do not recollect of any case of there having been any deficiency of the original.

Question. Do you recollect any usage or custom under the Spanish Government, by which a certified copy of a concession would be received in evidence, and taken as proof, that an original concession had existed, when no original could be found in the proper office, and when no other proof of the original having existed, could be produced, except the certified copy given by the government secretary?

Answer. I know of no case having occurred in which an original was wanted; but if the original could not be found, it would be supplied; and my reason for thinking so, is my knowledge of the patriarchal character of the government, and the benevolence of the governors, who would supply the deficiency in order that the party should sustain no loss.

Examined by claimant.

Question. Had the notary of the government possession of, or any thing to do with, the papers kept in the secretary's office?

Answer. Not until they were passed to his office for some particular act or operation.

Question. Had the government secretary possession of, or any thing to do with, the papers kept in the notary's office?

Answer. No.

Question. What kind of titles were kept in the offices of the secretary and notary of the government, respectively?

Answer. The first formation of the grant which was the memorial and decree, was lodged in the secretary's office, and was then passed to the notary's office when prepared to receive the royal title.

Question. Were not the royal titles kept in the notary's office?

Answer. Yes.

Question. Were not the concessions kept in the secretary's office?

Answer. Yes; the memorials and decrees were kept in the seeretary's office, and were called concessions.

Question. You said in your reply to a question from the counsel for the United States, that the certificate of the secretary and the notary "had not the same effect when applied to memorials and decrees." I now ask, would not the certified copies of either of these officers, to matters proper for them to certify to, be full evidence of the matters thus certified by them?

Answer. Yes.

Question. Was or was not the certificate of the secretary, to the copy of a memorial and decree in case of a concession, as full evidence of such memorial and decree, as the certificate of the notary to the copy of the title papers would be in case of a royal title?

Answer. Yes.

Examined by U. S. Attorneys.

Question. Do you recollect any distinct fact or occurrence under the Spanish Government, which enables you to answer the two last questions put to you by the counsel for claimant, in the affirmative?

Answer. No; I do not recollect any particular fact or occurrencce, but speak from general usage.

Question. How do you know the general usage, when you recollect no fact or occurrence by which the usage would be known?

Answer. The general usage of the papers being passed to and fro through the offices, and never being refused, does not recollect of any particular occurrence.

Question. Do you recollect an instance in which an original royal title could not be found in the proper office, either under the Government of Spain or the United States, where a certified copy of such title, under the hand and signet of the notary or keeper of the public archives was produced?

Answer. I dont recollect.

Examined by claimant.

Question. Were not the concessions kept in loose and separate sheets of paper in the secretary's office?

Answer. Yes.

Question. Were not the royal titles kept in books, or bound together, in the notary's office.

Answer. Yes.

Examined by U. S. Attorneys.

Question. Were not the original concessions carefully put up in bundles, and tied with strings, and were they not carefully preserved in every respect to the best of your recollection and belief?

Answer. Yes; they were tied up in bundles once a year, and labelled in front, and were carefully kept and preserved in every respect, while in the hands of the government secretary.

Question. Were the books and records of the royal titles, of which you have spoken, any thing more than a few sheets of paper stitched together without binding?

Answer. They were generally large books regularly bound.

Testimony of John M. Fontane.

OF JOHN M. FONTANE.

John M. Fontane, sworn as a witness in open court on behalf of the claimant.

Question. Be pleased to state whether or not you are a native inhabitant of East Florida.

Answer. I am.

Question. Are you acquainted with the manner in which grants or concessions of land were made in East Florida, in Spanish times; if so, state the manner?

Answer. I am in some measure. I cannot say that I am perfectly acquainted with the manner. In the first place, it would be by petition to the governor, and the governor would act upon the petition, and either grant or refuse the prayer of the petition.

Question. When the lands petitioned for were granted or conceded by the governor, was the concession or grant by the decree of the governor?

Answer. Yes.

Question. Was the original memorial of the petitioner, and the decree of the governor, retained in the government secretary's office, or were they delivered to the party petitioner?

Answer. The original memorial and decree remained in the secretary's office.

Question. What evidence of the grant or concession [if any] was furnished to the party to whom the lands were decreed?

Answer. A certified copy of the memorial or petition and decree by the secretary of the government.

Question. According to your opinion of the usages of this province in Spanish times, would or would not such certified copy of the memorial and decree have been received in the Spanish tribunals, and by Spanish public officers, as full evidence of title in the person to whom the concession or grant was thus certified to have been made?

Answer. I believe it wonld.

Question. Suppose in fact, that at the time such certified copy by the secretary of the government was offered in evidence, it should be shown that the original memorial and decree were not in the office, would such certified copy still have been received as evidence of title?

Answer. I am inclined to believe it would; because I have been acquainted with many instances where the original directed that a

certified copy be furnished the party for his security, and I understand the security was to secure the party against the loss of the original.

Question. Had the interested party, I mean the petitioner, any control over, or any right to, the possession of the original memorial or decree.

Answer. I was always led to believe he had not; the original always remained in the office, that is, when the prayer of the petitioner was granted. When the prayer of the petitioner was not granted, the party would sometimes withdraw the originals; but when the lands were granted, the originals always remained in the office.

Question. Was or was not the copy of a concession properly certified by the government secretary, full evidence that the original had been made, and was in the secretary's office at the time the certified copy was given?

Answer. I would believe so.

Question. According to the usages of the Spanish Government here, were not such copies, in the absence of the originals, received as equivalent to, and actually made originals?

Answer. I should believe from seeing the copy, that the original was in the office.

Question. Do you or not remember the time when the papers belonging to the office of the public archives, of East Florida, were delivered to Mr. Reynolds?

Answer. I do not recollect the exact time; I believe about the year 1823.

Question. By whom were they delivered to Mr. Reynolds?

Answer. I dont recollect by whom they were delivered; it runs in my mind that Mr. George Gibbs had something to do with them. I believe he was appointed one of the commissioners to take an inventory of them.

Question. Were you or not employed as a clerk in taking the inventory of these papers?

Answer. I was.

Question. In what state or condition were the papers found on your entering on the making of this inventory; did they appear to have been previously regularly and carefully kept, or otherwise?

Answer. They were far from being regularly kept. They did not appear to have been carefully kept; they were all over the room. A good many of the papers were not alphabetically arranged, and they were scattered and mixed.

Question. Were the papers found on shelves, or scattered and loose over the room?

Answer. I dont recollect at this time, whether any of them were on shelves, if there were any. I dont think there were more than two or three. I recollect seeing bundles on the floor.

Question. Were the bundles generally fastened, or were they loose and open?

Answer. Some of them were fastened, and a great many loose. The memorials and decrees were all on loose sheets of paper.

Question. In what place were these papers found on your entering on the duty of making this inventory?

Answer. In this house in the large room below.

Question. Are or are not royal titles bound together in books, and were they not so in Spanish times?

Answer. Yes. I have seen royal titles, bills of sale, and mortgages bound together in large books; and I have also seen some dozen or more stitched together and indexed at the back.

Question. How do you account for the different manner of keeping these royal titles?

Answer. The way I account for the different manner in which they were kept, is, when there was a sufficient number of small bundles stitched together, they were made into a large book.

Question. Were or were not the door and windows of the room in which you found these papers, secure and safe, or in what condition were they at that time?

Answer. Not much better than they are now; if any thing, worse. I do not recollect particularly the condition of the room; there is a new door to it now, which was not there then.

Question. When the papers were taken charge of by the commissioners, as stated by you, were they not in such a situation as to extremely liable to loss, to destruction, or to be taken from the office by any one disposed to take them?

Answer. I think that any one could have free access to the office. I have gone by it frequently, and seen the front windows open and no one in the office; this was before the commissioners had charge of these papers.

The counsel for the United States objected to all the testimony of this witness relating to the manner in which the papers in the office of the archives were kept, and objection overruled by the court.

Examined by U. S. Attorneys.

Question. In your answer to the sixth, seventh, eighth, ninth, tenth, and eleventh questions, put to you by the counsel for the claimants, did you intend to express your own opinion only, or did you intend to speak of the known and established usage of the province under the Spanish Government?

Answer. I speak my opinion as derived from the general usage of the country.

Question. What was your age at the time of the transfer of this province to the United States, and what opportunities had you of becoming acquainted with the usage of the province?

Answer. For many years before the exchange of flags, from the year 1815, to the change of flags, I was a commission merchant here, and had to apply for permission to land cargoes, and go through the regular routine of business. Witness is now about 36 years of age.

Question. Why do you believe that according to the usage of the Spanish Government, a certified copy of a concession would have

been received as full evidence of the concession; do you remember any case of the kind, and in what instance?

Answer. I recollect of one case, where I petitioned myself to have a piece of land surveyed, or to have a royal title made out; and I accompanied the petition with a certified copy of the memorial and decree, and that certified copy was received as evidence, and no further evidence of the title was required, and the petition granted. I believe this was in relation to some land to one Martin, at Musquito, the documents of which case the witness believes are in existence. I don't recollect any other particular case; but it is my impression, that that was the usage.

Question. Have you any other reason for believing the usage of the province to have been such as you have stated it was, than the one you have just given?

Answer. I derived the impressson, from the custom of the country at that time, and the routine of doing business.

Question. What was the custom in cases where there could be found no original concession in the proper office of the government, and an individual held a paper certified by the government secretary, to be a copy from an original in that office?

Answer. I never heard that question raised under the Spanish Government.

Question. You have said that you believed a copy of a concession properly certified by the government secretary, full legal authority to the surveyor general, to survey to the party the land granted by the concession; were you acquainted with the laws on the subject?

Answer. I can't say that I was.

Question. You have said, in answer to the eleventh question put to you by the counsel for the claimant, you should believe from seeing the copy of a concession, that the original was in the office; in this answer, do you express your belief only?

Answer. Yes; my belief.

Question. In speaking of the manner in which the archives were kept by Mr. Law, you have said that one might have had free access to the office, that you freqnently went by and saw the front windows open, and there was no one in the office; could not the royal titles have been taken out as well as the concessions?

Answer. Any paper could be taken out with the same facility. A bundle could be taken out and a big bundle, as easy as a small one, except that a person might hide a paper in his pocket, and it would not be so easy to hide a bundle.

Question. Were not the bundles in which the concessions were put, larger and more difficult to remove than the sheets of paper stitched together, on which the royal titles were written?

Answer. These memorials and decrees were generally in bundles, but on loose sheets of paper; generally the small bundles, containing royal titles, were stitched together, and on top of one another. I have stated before, that a whole bundle of concessions would be more diffi-

cult to remove on account of the size. It would be much easier to take away a concession, that was on a separate sheet of paper, than to take away one of these bundles of royal titles that were stitched together.

Question. Have you ever known an instance, either under the Spanish Government, or since the transfer of the province, in which a royal title was lost from the proper office?

Answer. I never heard of an instance.

Question. You have said that the papers in the office, under the charge of Mr. Law, were kept in great disorder; do you believe that a person unacquainted with the manner in which they were kept, could find any particular paper in a whole days search?

Answer. I expect it would be a very difficult thing for a person not acquainted with the manner in which these papers were kept, to find any particular paper. I can't tell whether he could in a day's search or not.

Examined by claimant.

Question. Do you not know that it was the uniform usage and practice of the surveyor general to act upon the copies of concessions, certified by the government secretary, as full authority to him for surveying the lands granted?

Answer. I always understood so.

No. 7.

Being the testimony of Fernando M. Arredondo, as taken under commission, in the case of Elizabeth Wiggins vs. the United States, and offered and read in this cause, on the part of the claimant, the same being so copied as to be made applicable thereto, to wit:

Deposition of F. M. Arredondo.

DISTRICT OF EAST FLORIDA, *July Term*, 1833.

JOHN RODMAN, Assignee, &c.,
vs.
THE UNITED STATES OF AMERICA.

Interrogatories to be propounded to Fernando de la Maza Arredondo, a witness to be sworn and examined in behalf of the petitioner in the above entitled cause, before Joseph S. Sanchez and John C. Cleland, esquires, justices of the peace for St. Johns county.

First. What is your age?

Second. Are you a native born Spanish subject?

Third. Have you been prior to the year 1819, [at which time this territory was ceded to the United States,] a resident of East Florida; if you have, for what length of time?

Fourth. Are you familiar with the manner in which grants to land were usually made in this province, while under the dominion of the Spanish monarchy? if so, state what it was.

Fifth. Was the original decree or concession, by which such grants were made, delivered to the party in whose favor they issued, or were they retained in some one of the public offices? if the latter, state in what office they were so retained.

Sixth. If, in answer to the last preceding interrogatory, you say that the original decree, grant, or concession, was retained in a public office, by what means was it placed in the power of the grantee to evidence his title, if at any time it became necessary to do so; was it, or was it not, by the delivery to him of a copy of such grant, concession, or decree; and if it was, was such copy certified, and if certified, by whom?

Seventh. If you say, in your answer to the last interrogatory, that a certified copy of the grant, concession, or decree, was issued to the grantee for his use, be pleased to say to what credit was such certified copy entitled, according to the usages and practice that prevailed here in Spanish times; was it, or was it not, received as full and conclusive evidence of the facts set forth therein, and of the execution, existence, and genuineness, of the grant of which it was a copy?

Eighth. Were copies of grants, decrees, or concessions, certified by the government secretary of the province, received as evidence by the Spanish authorities, and in Spanish courts?

Ninth. If by any means the original grant, concession, or decree, had been lost, destroyed, or any how abstracted, from the office in which it was by law deposited, would such copy, of such grant, concession, or decree, so certified by the government secretary, still have been received as evidence of the facts therein set forth, by Spanish authorities, and in Spanish courts?

Tenth. Suppose the original memorial and decree of a concession or grant, from which such certified copy was made, could not be found at the time the certified copy was offered in evidence, nor proved in any other way than by such certified copy, would it [to wit, such certified copy,] have been received as evidence, that such original had been made, and had existed in the proper office, as set forth in such certified copy; additional question to be propounded on behalf of the petitioners.

Eleventh. Was or was not a copy of a concession, certified by the secretary of the government, entitled to the same faith and credit as the certificate of a notary of the government to copies of instruments in his office?

J. RODMAN.
In pro. per.

Cross interrogatories to be propounded to Fernando de la Maza Arredondo, on behalf of the United States.

First. If you answer the third preceding direct interrogatory in the affirmative, please to state what was your business, occupation, and pursuits, during your residence in East Florida?

Second. If in answer to the fourth interrogatory, you say that "you are familiar with the manner in which grants to land were usually made in this province, while under the dominion of the Spanish monarchy, please to state whether that manner was uniform or variable, and if it varied, in what did the variance consist?

Third. If in answer to the fifth direct interrogatory, you say that the original decree or concession was delivered to the parties, please to state what evidence was retained by the government, that such concession had been made; and if you say that they were retained in some public office, state whether that practice was uniform and unvariable or not, and if variable, in what such variance consisted?

Fourth. If in answer to the sixth direct interrogatory, you say that the original decree or concession was retained in a public office, and that a copy was delivered to the party in whose favor such decree or concession was made, please to state how, and in what manner, such copy was verified; had it a seal, flourish, signio, or signet, affixed to it, and if it had either, which, and by whom, was such verification made?

Fifth. If in answer to the seventh direct interrogatory, you say that a cerified copy of the grant, concession, or decree, was received as full and conclusive evidence of the facts set forth therein, and of the execution, existence, and genuineness, of the grant of which it was a copy, please to state whether you know and can recollect a single instance under the Spanish Government, where such certified copy of a grant, concession, or decree, for lands was offered and received in evidence in any court or tribunal in this province, when it was known that "no original" of such grant, concession, or decree, was on file in the proper office? if you know of any such case, please state it, and name the parties to it.

Sixth. If you do not know of any case where a certified copy of a grant, concession, or decree for lands, was offered and received in evidence in any Spanish court or tribunal, when it was known that there was "no original" on file in the proper office, how can you say there was such a usage as that of which you have above spoken?

Seventh. If you answer the eighth direct interrogatory in the affirmative, please to state whether you know of one single case where a copy of a grant, decree, or concession, certified by the government secretary of this province, was received as evidence by the Spanish authorities, or in any Spanish court, when it was known that strict search had been made in the proper office for the "original," and "no such original" could be found on file there?

Eighth. If you answer the ninth direct interrogatory in the affirmative, please to state whether you ever knew such a case as that described in said interrogatory to occur in this province under the Spanish Government? If you did, please to mention the case or cases.

Ninth. If you answer the tenth direct interrogatory in the affirmative, please to state clearly and distinctly, whether you ever knew any such case as that described in said tenth interrogatory to occur in East Florida, under the Spanish Government? if you did, please

to name the case or cases, and state the time when they occurred, and in what court or tribunal?

Tenth. Do you not claim title to some land in East Florida, under alleged concessions or grants from the Spanish Government, to original grants, or concessions, for which cannot be found in the archives, and which claim has not been confirmed by the United States?

Eleventh. Do you not rely upon the certificate of Tomas de Aguilar, formerly secretary of the government of this province, as proof upon which you expect to procure the confirmation of your claim to one or more tracts of land in East Florida, claimed by you under concessions alleged to have been made by the Spanish Government? have you not claims for land, for which you have no other evidence that a grant, decree, or concession, was ever made? please state particularly.

Twelfth. If you answer the additional interrogatory of the complainant, No. 11, in the affirmative, please to state how you know that fact. Do you know of any case where, in any Spanish court or tribunal, the "faith and credit" to which a copy of a concession, certified by the secretary of government, and of the copy of any document from the escribano's office, certified by said escribano, were respectively entitled, was made a question?

Thirteenth. Was not the certificate of the escribano verified by a flourish or signio, [otherwise called a signet,] or both, and did the government secretary affix to his certificates either a seal, flourish, signio, or signet; if he did, which?

THOS. DOUGLAS,
United States Attorney, &c.

SUPERIOR COURT, *District of East Florida.*

JOHN RODMAN, Assignee, &c.,
vs.
THE UNITED STATES OF AMERICA. } Land claim.

The answers of Fernando M. Arredondo, to the interrogatories propounded to him, the said Arredondo being first duly sworn:

To the first interrogatory. Witness answers, that on the fourth of next month, [August,] he will be 69 years of age, if alive.

Second interrogatory. Witness answers, yes.

Third interrogatory. Witness answers, I have been a resident from the year 1784 to 1812, at which period I went from this to the Havana, as the representative of East Florida; that my family resided at St. Augustine, and though absent at this time, I was considered a resident of Florida.

Fourth interrogatory. Witness answers, yes, it was by memorial of the person who wanted the land, and if decreed upon that memorial, granted, it remained in the secretary's office, and if denied, the original memorial was returned to the party.

Fifth interrogatory. Witness answers, that they were retained in the secretary's office of the government, and a copy was granted by the secretary, if it was required by the party.

Sixth interrogatory. Witness answers, that if it was required by the party, the secretary gave an authenticated copy, which generally accompanied the petition for a royal title, and without the certificate they could not proceed, as the original never came out of the office.

Seventh interrogatory. Witness answers, that it was the same as the original; I never knew an instance that it was doubted or questioned.

Eighth interrogatory. Witness answers, yes, there is not the least doubt of it, the same as if it was the original.

Ninth interrogatory. Witness answers, no doubt of it.

Tenth interrogatory. Witness answers, yes, no doubt of it.

Eleventh interrogatory. Witness answers, yes.

Cross Interrogatories.

To the first cross interrogatory. Witness answers, that he was in the employment of the government as principal officer of the hospital, commissary of the Indians, and clerk in the exchequer for more than 20 years.

Second cross interrogatory. Witness answers, I do not know that there was any variance, you sent the memorial, and got the decree; under all the governors here it was done in the same manner.

Third cross interrogatory. Witness answers, the original memorials were always retained in the government secretary's office, [as stated in the fifth direct interrogatory,] as evidence of the grant having been made by the government, and does not know of any variance.

Fourth cross interrogatory. Witness answers, the certificate had no seal, but merely signed by the secretary and his private flourish.

Fifth cross interrogatory. Witness answers, that he does not recollect of any instance, but does not doubt, that the certificate would be received in evidence in any of the Spanish courts.

Sixth cross interrogatory. Witness answers, that he has not said, that that was the usage, but no doubt if such a case had occurred, that the certificate of the secretary would be received in evidence.

Seventh cross interrogatory. Witness answers, that he does not remember of any case; but I have no doubt that it would be received in evidence, if the secretary would certify that such a document existed.

Eighth cross interrogatory. Witness answers, that he does not remember any particular case.

Ninth cross interrogatory. Witness answers, that he does not recollect of any.

Tenth cross interrogatory. Witness answers, yes.

Eleventh cross interrogatory. Witness answers, that he depends entirely upon his certificate, because my title has been in the office, and is proved to have been so, but now cannot be found; he

knows that one of his titles cannot be found in the office, but others may have been lost also.

Twelfth cross interrogatory. Witness answers, that he knows it because it was publicly established, that they were entitled to the same faith and credit. I do not know of any instance where it was disputed, but if such an instance had occurred, I have no doubt, but that it would have been received as conclusive proof.

Thirteenth cross interrogatory. Witness answers, yes, every escribano had their separate signets, which they affixed to documents when they authenticated them; to some documents the secretary affixed the government seal, and to others his own name and flourish; to some passports the government seal was affixed by the secretary, but to his certificates, nothing but his name and flourish.

F. M. ARREDONDO.

Sworn and subscribed to, before us this twenty-fifth day of July, A. D. 1838.

JOS. S. SANCHES, J. P.
JOHN C. CLELAND, J. P.
Commissioners.

No. 8.

SUPERIOR COURT, for the *Eastern District of Florida.*

July Term, 1833.

JOHN RODMAN, Assignee, &c.
vs.
UNITED STATES OF AMERICA. } Land Claim.

Deposition of John A. Cavedo.

Being the testimony of John A. Cavedo, taken under commission in the case of Elizabeth Wiggins, vs. the United States, and offered and read in this cause on the part of the claimant, the same being so copied, as to be made applicable thereto, to wit:

Interrogatories to be propounded to John A. Cavedo, a witness to be produced, sworn and examined in the above entitled cause, on behalf of the plaintiff therein, before Joseph S. Sanches and John C. Cleland, Esquires.

First. Are you or not a native inhabitant of East Florida.

Second. Have you been acquainted with the mode of granting lands in East Florida in Spanish times.

Third. What evidence of such grant or concession was given to the party in whose favor the grant or concession was made.

Fourth. If you say in answer to the last preceding interrogatory, that a copy of the original memorial and decree certified by the Secretary of the government, was given to the party, be pleased to

state whether such certified copy according to usage in Spanish times, was deemed full evidence of the grant or concession.

Fifth. Suppose the original memorial and decree should have been lost, or could not have been found, would such certified copy by the secretary of government still have been received by Spanish tribunals, as full evidence of the grant or concession.

Sixth. Would or would not such certified copy according to your opinion have been full and conclusive proof that the original memorial and concession, had been made as set forth in the certificate, though at the time such certified copy was offered in evidence, the original could not be found, nor proved in any other way than by the certificate of the secretary.

Seventh. Do you or not consider*ed* the copies certified by the secretary of government equivalent to the originals, as matter of evidence.

Eighth. Do you know whether or not the office of the public archives of East Florida was at any time in the keeping of one Edmund Law, and if so, when, and how long; and in what house was such office kept by him?

Ninth. Were you or not in the habit of frequenting the said office of public archives, while so under the charge of said Law?

Tenth. In what condition were the papers in said office kept; were they carefully arranged on shelves, or carelessly scattered about the room?

Eleventh. Were the papers secured in bundles or not, and if they were generally so secured, were or not in many instances, the fastenings of the bundles loosed, so that the separate sheets of which said bundles were composed, were exposed to be scattered and blown about, and were they not often actually, so scattered and blown about?

Twelfth. Have you or not seen at various times, the public papers in said office lying about in confusion on the floor?

Thirteenth. Was or was not the said office the common thoroughfare and lounging place of a great many idle persons?

Fourteenth. Was or was not the said office frequently left open, without the presence of any person who was authorized to protect, supervise, and keep in custody, the papers deposited in it?

Fifteenth. Do you or not know if it was the practice of persons who desired the use of papers on file in the said office, to take them out of said office in as great numbers, and at any time they pleased so to do?

J. RODMAN, *in pro. peri.*

Cross Interrogatories to be propounded to John A. Cavedo, on behalf of the United States.

First. If in answer to the fourth direct interrogatory, you say that a certified copy of the memorial and decree, was according to usage in Spanish times, full evidence of the grant or concession to the person in whose favor such grant or concession was made, please state how you know that fact; did you ever see or hear of a case in

which this principle was tested? If you did, please name the case, and the parties to it?

Second. If you answer the fifth direct interrogatory in the affirmative, please to state how you know that fact; do you know or can you recollect a single case under the Spanish government, where such certified copy of a memorial and decree was received by any Spanish tribunal, as full evidence of the grant or concession, when the original memorial and decree could not be found, and there was no other evidence that such original memorial and decree ever existed; if you do, name the case and say when it occurred?

Third. If you answer the sixth direct interrogatory in the affirmative, please to state whether you ever knew a single case under the Spanish government where such certified copy was received by any Spanish court or tribunal, as full and conclusive proof that the original memorial and concession had been made as set forth in the certificate, when at the time such certified copy was offered in evidence, the original could not be found, nor proved in any other way, than by the certificate of the secretary, and there was no other proof that such original ever existed; if you do, please state the case, and say when, and where it occurred, and name the parties to it?

Fourth. If you answer the seventh direct interrogatory in the affirmative, please to state whether you know of a single case where such a copy certified by the secretary of government was offered and received as evidence equivalent to the original; when after due examination in the proper office, no such original was found on file there, and there was no proof except said copy, that such original ever existed? If you do, please name the case and the parties to it, and say when, and where it occurred?

Fifth. If you know of no such case or cases as those above specified, how can you testify that the "usage" is as you have above stated?

Sixth. If you answer the thirteenth direct interrogatory in the affirmative, please to name the persons who made said office a lounging place and thoroughfare at the time you mention?

Seventh. If you answer the fifteenth direct interrogatory in the affirmative, please to state how you know that the practice in relation to said office was as you have stated it; and particularly the time, when, and what person or persons took any original papers from said office, and what papers they took, and whether they did not return them again to said office?

The counsel for the United States object to all the direct interrogatories of the complainant, from the seventh to the fifteenth inclusive, because they are leading, irrelevant, and wholly inadmissible according to every principle of law and equity.

THOS. DOUGLAS,
United States Attorney, &c.

SUPERIOR COURT, *Eastern District of Florida.*

JOHN RODMAN, Assignee, &c.
vs.
THE UNITED STATES, OF AMERICA. } Land Claim.

The answers of John A. Cavedo to the interrogatories propounded to him in the above entitled cause, the said Cavedo being first duly sworn.

To the first interrogatory. Witness answers, I am.

To the second interrogatory. Witness answers, I have.

To the third interrogatory. Witness answers, a copy of the governors decree from the secretary of the government.

To the fourth interrogatory. Witness answers, It was.

Fifth interrogatory. Witness answers, It would.

Sixth interrogatory. Witness answers, It would.

Seventh interrogatory. Witness answers, I do.

Eighth interrogatory. Witness answers, I knew Edmund Law to have had the archives under his charge; I do not know how long, but it was kept at the government house.

Ninth interrogatory. Witness answers, I was, as he had employed me to write for him in the same office.

Tenth interrogatory. Witness answers, they were a part of them kept on shelves, and a part of them on the floor, they were not at all kept carefully.

Eleventh interrogatory. Witness answers, there were a part of them in bundles, and a great many loose, they were exposed to be blown and scattered about the room, and were blown and scattered about the room.

Twelfth interrogatory. Witness answers, many times.

Thirteenth interrogatory. Witness answers, I do not know whether the persons that frequented the office were idle or not, but there was a great many loungers about the office.

Fourteenth interrogatory. Witness answers, it was.

Fifteenth interrogatory. Witness answers, Mr. Law gave me an order to deliver the gentlemen of the bar, documents out of the office, by my receiving a receipt for the same.

Cross Interrogatories.

To the first cross interrogatory. Witness answers, because I never heard of any of them being disputed or rejected by the government.

Second cross interrogatory. Witness answers, when the party petitioned for his royal title, the certified copy of the governors secretary was considered sufficient evidence to enable the party to obtain his title from the escribano's office.

Third cross interrogatory. Witness answers, I do not know, I cannot exactly state.

Fourth cross interrogatory. Witness answers, the certificate of the secretary of the government was considered as sufficient evidence; I do not recollect of any particular case, or the parties.

Fifth cross interrogatory. Witness answers, because I visited occasionally the escribano's office, and I saw how the proceedings went on.

Sixth cross interrogatory. Witness answers, I know several persons, to wit: Jos. S. Sanches, Edward R. Gibson, Charles Vignoles, John M. Fontane, Raphael D. Fontane, Charles Gobert, Thomas Payne, Lewis Hugnon, and many others that I cannot recollect.

Seventh cross interrogatory. Witness answers, I know of one instance wherein I took a receipt from Gautier for the testamentary document of the estate of Mateo Guardarama; I do not recollect the time.

JOHN A. CAVEDO.

Sworn to and subscribed before us, this 30th day of July, A. D. 1833.

JOHN C. CLELAND, J. P.
JOS. S. SANCHES, J. P.
Commissioners.

No. 9.

Offered and read by United States.

Being the testimony of Antonio Alvarez, taken under commission in the case of Charles F. Sibbald vs. the United States, and offered and read in this case on the part of the United States, the same being so copied as to be made applicable thereto, to wit:

SUPERIOR COURT, *District of East Florida.*

St. John's County.

THE UNITED STATES *ads.* JOHN RODMAN, Assignee, &c. } Land Claim.

Deposition of Antonio Alvarez.

Interrogatories to be propounded to Antonio Alvarez, Esq. a witness to be sworn and examined on behalf of the United States, before Kingsley B. Gibbs, Esq,. or John C. Cleland, Esq.

First. Are you a native of East Florida, or not?

Second. What is your age?

Third. How long have you resided in the city of St. Augustine in East Florida?

Fourth. Did you hold any office in East Florida before the transfer of that province to the United States? If you did, please to state what office, and when and how long you discharged the duties of such office?

Fifth. Did you at any time act as clerk in the governors secretary office, or in the office of the escribano or not? If you did, please to state which, when, and how long.

Sixth. In what office were concessions of land made and kept in East Florida, before the transfer of that province to the United States?

Seventh. In what office were royal titles [real titles] made and kept in East Florida before the transfer of said province to the United States?

Eighth. In what office should the papers now be found deposited, which are referred to in the 6th and 7th preceding interrogatories. Is or is not the public archives the proper place of deposit for such papers?

Ninth. Are you the keeper of the public archives of East Florida or not? If you are please to state how long you have held said office?

Tenth. Please to name the several persons who held and exercised the office of governor of the province of East Florida, between the years 1784, and 1821, and the time when each of said persons entered upon the discharge of his duties as such governor, and when they respectively ceased to discharge the said duties.

Eleventh. Is there any order on file in the said archives under your charge from the king of Spain, or from the council of the Indies, requiring said governor to render an account of his administration during the time when he held and discharged the duties of said office of governor as aforesaid, if there is, please state to which of said governors said order was directed, and annex to your answer a copy thereof.

Twelfth. Were any of said governors ever required to render such account? If yea, state which of them.

Thirteenth. Did any one of said governors ever render such an account? If they did, please to state which of them, when it was made, and particularly whether said account contained a statement of the number of grants or concessions of land made by said governors during such administration, with the name [or names] of each grantee or [grantees] and the number of acres of land granted to each?

Fourteenth. Is there any copy of such an account made by any of said governors now on file in the archives under your charge? If there is, please annex a copy thereof to your answer.

Fifteenth. Did any of said governors ever undergo a residencia in said province? If yea, which of them and when.

Sixteenth. Did any of said governors ever render any account to the King, Captain General, Intendant of Cuba, or any other officer, of the lands granted by them, except the single case of the exchange of lands for a vessel with Juan Russel or not? If they did please

to state which of them, and of what said account consisted, and state also the particulars of the case of Juan Russell?

THOMAS DOUGLAS,
U. States Attorney, &c.

Cross interrogatories to the direct on the part of the United States, by the plaintiff, to Antonio Alvarez, Esq. a witness to be sworn and examined on behalf of the United States.

First. Were or not under the Spanish government of East Florida, grants or concessions of land made by the governor, often kept in the secretary's office, as well as in the escribano's office?

Second. Is it or not well known to you that soon after the cession of East Florida to the United States, the public archives of grants, concessions and other public documents of the Spanish government, were kept by Edmund Law, Esq. a citizen of the United States, understood to have been appointed to that office by the government of the United States.

Third. Was it not notorious in St. Augustine in East Florida, that the aforesaid Edmund Law kept the papers and other documents in the said archives, in a very loose, irregular, careless and slovenly manner; and that he often left the door outside and inside quite open, and no person in the office to take the least care of the papers and documents in the archives, many of which were scattered on the floor and tables?

Fourth. How did you come to, and from whom; if any knowledge you possess of the duties of the governors of East Florida to the King of Spain, the council of the Indies, or to any other public authority?

Fifth. How do you know whether or not the said governors, or any of them, neglected duly to render an account, or their or his administration to the King, or to any other public authority?

Sixth. Did you ever know of any grant, concession, or order of survey, made by any governor of East Florida, having been revoked or annulled by the King of Spain, the council of the Indies, or by any higher authority than that of the governor himself?

Seventh. Was the grant, concession, sale, or exchange, made by the said Juan Russell, ever revoked or annulled by the King of Spain, the council of the Indies, or the Captain General of Cuba, or any other authority whatever?

Eighth. Was it the custom or duty of the governor of East Florida, to file in the public archives the particular instructions or directions from the King of Spain, the council of the Indies, or the Captain General of Cuba, or any other authority, in regard to the duties, power, or conduct of the said governor?

JOHN RODMAN,
Sol. for Claimant.

The United States, by their council, object to the second and third cross interrogatories because they are inclevant.

THOS. DOUGLAS.
United States Attorney, &c.

SUPERIOR COURT, *District of East Florida.*

THE UNITED STATES, *ads.* JOHN RODMAN, Assignee, &c. } Land claim.

The answers of Antonio Alvarez, a witness examined in the above cause, to the interrogatories propounded to him, the said Antonio Alvarez being first duly sworn:

To the first interrogatory. Witness answers, I am a native of East Florida.

Second interrogatory. Witness answers, I am forty-two years of age.

Third interrogatory. Witness answers, I have always been a resident of St. Augustine.

Fourth interrogatory. Witness answers, I was a clerk in the government secretary's office, from the year 1807 to 1821, with the exception of two intervals, one in the year 1809 and part of 1810, and the other a part of 1814 and part of 1815, I was absent.

Fifth interrogatory. Witness answers, I acted as clerk in the government secretary's office, as stated in the preceding interrogatory; I also attended as clerk in the office of the escribano for a few months, with the permission of the governor in 1814.

Sixth interrogatory. Witness answers, concessions of land were kept in the government secretary's office.

Seventh interrogatory. Witness answers, royal titles [real titles] were made and kept in the office of the escribano.

Eighth interrogatory, Witness answers, in the office of the public archives, which is the proper place of deposit for said papers.

Ninth interrogatory. Witness answers, I am now the keeper of the public archives of East Florida, and have been so since the year 1829.

Tenth interrogatory. Witness answers, Governor Lespedes was governor of East Florida, from the year 1784 to 1790; Quesado from the year 1790 to 1796; White from 1796 to 1811; Estrada from 1811 to June 1812; Kindelan from June 1812 to, I believe, May 1815; and Coppinger from 1816 to the change of flags; Lespedes and Quesada I did not know, but by being in the government secretary's office, I know the dates of their respective offices; I believe that between 1784 to 1811, one Morales acted as governor pro tem. for a short space of time.

Eleventh interrogatory. Witness answers, I believe there is no order on file in the said archives, under my charge, requiring any of the governors of East Florida to render an account of their administration.

Twelfth interrogatory. Witness answers, I answer the same as the preceding interrogatory.

Thirteenth interrogatory. Witness answers, I answer in the same manner as in the eleventh interrogatory.

Fourteenth interrogatory. Witness answers, I answer in the same manner as in the eleventh interrogatory.

Fifteenth interrogatory. Witness answers, I believe that none of the governors ever underwent a residence in East Florida.

Sixteenth interrogatory. Witness answers, the governors of East Florida, I believe, never rendered an account to the King or to any of the officers named in this interrogatory, except in the case of one John Russel, alluded to in the said interrogatory. John Russel, I believe, in 1812, exchanged a schooner for 4,000 acres of land, the proceedings of which, is recorded in my office.

Cross Interrogatories.

To the first cross interrogatory. Witness answers, concessions for land, under the royal order of 1790, were kept in the office of the secretary of the government; grants, under the royal order of 1815, were kept in the office of the escribano; the titles in absolute property, under each of these orders, were made and kept in the office of the escribano.

Second cross interrogatory. Witness answers, I do not know, or now recollect, in what manner Edmund Law kept his papers; but I recollect of hearing many persons complain at that time of the manner he kept his papers.

Third cross interrogatory. Witness answers, I know that Edmund Law kept the Spanish archives soon after the change of the flags; but I do not know by whom he was appointed to that office.

Fourth cross interrogatory. Witness answers, what knowledge I possess on the subject of this interrogatory, was obtained at the time I was employed as clerk in the government secretary's office.

Fifth cross interrogatory. Witness answers, I cannot say whether any of the governors of East Florida neglected, or not, their duty to render an account of their administration.

Sixth cross interrogatory. Witness answers, I do not know of any grant, concession, or order of survey, made by any of the governors of East Florida, that was ever revoked or annulled by the Spanish Government.

Seventh cross interrogatory. Witness answers, the exchange for land, made to John Russel, was not revoked by the King of Spain or any other authority.

Eighth cross interrogatory. Witness answers, it was the custom and duty of the governors of East Florida, to file in the proper office all official communications to them, according to the nature of the subject matter of correspondence.

ANTONIO ALVAREZ.

Sworn to and subscribed before me, this 4th day of August, A. D. 1834.

JOHN C. CLELAND,
Commissioner.

As commissioner named in the commission, hereunto annexed, I do certify, that after being sworn myself, I did examine the witness named in said commission, hereunto annexed, under oath, and that the answers to the interrogatories annexed, are truly and correctly herein set forth.

JOHN C. CLELAND,
Commissioner.

No. 10.

Document in Russel's Case.

Offered and read by United States.

TRANSLATION.

Under date of the 14th of June last, His Excellency, the Minister of the Royal Domain, tells me what follows: "I have given to the King an account of your Excellency's letter No. 9, of the 20th of November last, in which you inform of what was directed to you by the governor of East Florida, on the occasion of his having given to Don Juan Russell one thousand acres of land in exchange for a schooner which he wanted for the royal service, and which, with all its appurtenances, was valued two thousand and six hundred dollars. His Majesty, being informed of the whole transaction, has been pleased to approve, for this time only, the said determination, in consideration of the absolute want of funds in the said province, and commands me to charge you again, as I do charge you, to comply with the provisions of the royal orders, of the 14th November, 1804, and of the 31st March, 1806, which prohibit the alienation of the royal lands which was made in favor of foreigners, and which provisions ought to be complied with rigorously in future; this, by order of his Majesty, I communicate to your Excellency, for your knowledge and government."

And I communicate the same to your Excellency, for the corresponding effects on your part. God preserve your Excellency many years. Havana, 4th of March, 1815.

APODACA.

His Excellency the GOVERNOR OF EAST FLORIDA.

St. Augustine, 21st November, 1829.—I certify that the preceding is a correct translation of the Spanish document annexed.

A GAY, *Translator and Interpreter of the Superior Court.*

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-four, to wit, on Monday, the thirty-seventh day of the said term, and the twenty-fourth day of the month of November, the following entry of record was made in this cause, to wit:

Cont'd for further proof.

JOHN RODMAN, Assignee, &c.,
vs.
THE UNITED STATES OF AMERICA,
} Land claim, 16,000 acres.

This cause having been heard and submitted to the court, and the court having examined the same, doth order that this cause be continued, with leave to the parties to introduce further proof therein.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to which term, this cause had come by regular continuance, to wit, on Monday, the first day of said term, and the ninth of said month, the following entry of record was made in this cause, to wit:

Leave to amend Petition.

JOHN RODMAN, Assignee, &c.,
vs.
THE UNITED STATES.
} Land claim, 16,000 acres.

This day came the parties, by their attorneys, and on motion of the claimant's attorney, leave is given him to amend the petition filed in this case.

And on the same ninth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, the said claimants, by their solicitor, under the leave of the court, as aforesaid, brought and filed in the clerk's office of the said court, his amendment to the said petition, which is in the words and figures following, to wit:

Amendment to Petition.

ROBERT MCHARDY'S Est.,
vs.
THE UNITED STATES.
} Land claim.

To the Honorable Robert Raymond Reid, Judge of the Superior Court of East Florida:

Your petitioners, Malvina Richey, Caroline Eliza McHardy, and Mary Eliza McHardy, respectfully show, that they are children and heirs of Robert McHardy, deceased; the original grantee of the lands claimed in the petition filed in this cause, and that being interested in the property of said land, they pray that their names be added as parties claimant against the United States; and your petitioners will ever pray, &c.

D. LEVY,
Solicitor for Claimants.

No 11.

Affidavit of John Rodman.

Offered and read by claimant.

Personally appeared in open court, John Rodman, who made oath, that, as executor and assignee of Robert McHardy, deceased, he came into the possession, at the death of the said McHardy, of all the papers of said decedant, and that the office original of the grant made to said McHardy, by the government of this then province, on the 8th day of November, 1814, of sixteen thousand acres of land, is not among said papers, and that he has never heard of its having been at any time in the possession of the said McHardy.

Affiant farther states, that McHardy died in the year eighteen hundred and twenty-two, and that his papers were taken possession of by him, said affiant, immediately thereafter.

JOHN RODMAN, *Executor and Assignee of Robert McHardy, dec'd.*

Sworn to, before me, in open court, this 16th day of July, A. D. 1838.

K. B. GIBBS, *Clerk.*

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to wit, on Wednesday, the second day of said term, and the eleventh of said month, the following entry of record was made in this cause, to wit:

Cause again Submitted.

JOHN RODMAN, Assignee of Robert McHardy, dec'd, and MALVINA RICHEY, CAROLINE ANN MCHARDY, and MARY ELIZA MCHARDY, children and heirs of Robert McHardy. dec'd. *vs.* THE UNITED STATES OF AMERICA. — Land claim, 16,000 acres.

This day came as well the counsel for the said claimants, as the counsel for the United States, and argument of counsel was heard and concluded on both sides, and this claim submitted to the court under the testimony and evidence heretofore offered and filed in this cause.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to wit, on Monday, the eighth day of said term, and the tenth day of the month of September, the following entry of record was made in this cause, to wit:

Decree of the Court.

JOHN RODMAN, Assignee of Robert McHardy, dec'd, and MALVINA RICHEY, CAROLINE ANN McHARDY, and MARY ELIZA McHARDY, children and heirs of Robert McHardy, dec'd,
against
THE UNITED STATES OF AMERICA.
} Land claim, 16,000 acres.

Whereas, John Rodman, as assignee of Robert McHardy, deceased, did, in pursuance of the act of Congress of the United States, entitled "an act supplementary to the several acts, providing for the settlement and confirmation of private land claims in Florida," and approved 23rd day of May, 1828, on the tenth day of April, 1829, file his petition for the confirmation of certain land therein mentioned, in the clerk's office of the superior court, for the eastern district of Florida: And, afterwards, to wit, on the 9th day of July, 1838, the said petition was amended under the leave of the court, by making the said Malvina Richey, Caroline Ann McHardy, and Mary Eliza McHardy, children and heirs of the said Robert McHardy, deceased, parties claimant before this court: And, whereas, the attorney of the United States for this district, did duly appear and file his answer, and amended answer to the said petition, and this cause having been heard, and evidence and argument of counsel, as well on the part of the said claimant, as on that of the United States, having been offered and submitted to the court, and the court having examined the claim of the said petitioners, and the answer and amended answer of the attorney of the United States, together with the evidence filed in this cause, and having maturely considered the same, doth order, adjudge, and decree, that this claim is valid, and that in accordance with the laws and customs of Spain, and under, and by virtue of the late "treaty of amity, settlement, and limits, between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821; and under and by virtue of the laws of nations, and of the United States, it is hereby confirmed, adjudged, and decreed, unto the said claimants, to the extent, for the number of acres, and at the place, as in the memorial of the said Robert McHardy, to the governor, and the decree of the governor thereon, is set forth, to wit: "a square of five miles of land," situated "in the place known under the denomination of Apprecile Spring, opposite the old store of the house of Messrs. Panton and Leslie, called Hamlet."

And afterwards, before the superior court for the district of East Florida, holden at the court-house, in the city of St. Augustine, at the term of October, in the year of our Lord one thousand eight hundred and thirty-eight to wit: on Wednesday, the second day of said term, and the tenth of said month, the following entry of record was made in this case, to wit:

Appeal.

THE UNITED STATES OF AMERICA *ads.* JOHN RODMAN, Assignee, and the heirs Robert McHardy, dec'd. } Land claim, 16,000 acres.

This day, came as well the attorney of the United States for this district, as the solicitor for the said claimants; and the said attorney of the United States moved the court that an appeal be granted in this case on behalf of the said United States, from the decree of this court to the Supreme Court of the United States; and that a citation, with notice of said appeal, may be forthwith issued by the clerk of this court to the appellees, and that the same may be served by the marshal of said district upon the said appellees or their solicitor or agent, and returned to this court within thirty days from the issuing thereof. All of which is ordered accordingly.

In pursuance of the above order, a citation of appeal was duly issued; and which said citation, and the return of the marshal thereon, are in the words and figures following, to wit:

Citation of Appeal and Return.

In the name and by the authority of the United States of America, to John Rodman, assignee, and to Malvina Richey, Caroline Ann McHardy, and Mary Eliza McHardy, children and heirs of Robert McHardy, deceased, or to their Attorneys, Agents, or Solicitors, greeting:

You are hereby cited and admonished, that an appeal has been taken on the part of the United States, from the decree of the superior court for East Florida, to the Supreme Court of the United States, in a certain claim to sixteen thousand acres of land, wherein you, the said John Rodman, as assignee of Robert McHardy, and the said children and heirs of the said Robert McHardy, deceased, are claimants, and the said United States respondent; and that the record in said cause, will be forwarded to the said Supreme Court, to be placed on the docket of said court at the next term thereof, to be holden on the second Monday of January next.

Witness the honorable Robert Raymond Reid, judge of our said court, at the court house, [SEAL OF THE COURT.] in the city of St. Augustine, this 10th day of October, A. D. 1838.

K. B. GIBBS, *Clerk.*

THOS. DOUGLAS,
Dist. Atty.

J. RODMAN, and
D. LEVY,
Sol's for Claimants.